



Cabin Ridge Project Limited

Coal Policy Consultation – Position Paper

www.cabinridgecoal.com

TABLE OF CONTENTS

	Page
I. EXECUTIVE SUMMARY	1
II. OVERVIEW	4
III. CABIN RIDGE.....	4
IV. BACKGROUND TO THE 1976 COAL POLICY.....	7
A. Population and Unemployment.....	7
B. Coal Development	9
C. Legislative Context	15
1. Alberta Legislation.....	15
2. Other Relevant Frameworks and Factors in 1976.....	18
3. Conclusion on the Legislative Context	19
D. The 1976 Coal Policy.....	20
1. Purpose.....	20
(a) Extrinsic Evidence	20
(b) Intrinsic Evidence and Context	20
(c) Conclusion on the 1976 Coal Policy’s Purpose.....	23
2. Contents	23
E. Coal Development under the 1976 Coal Policy.....	28
V. CURRENT LEGISLATIVE FRAMEWORK FOR COAL DEVELOPMENT IN ALBERTA.....	38
A. Provincial Framework.....	38
B. Federal Framework	43
C. Indigenous Rights	45
D. Alberta’s Land Use Framework.....	47
VI. CABIN RIDGE’S POSITION	56
A. Process	56
B. Economic Outcome – Global and Local	57
C. Outcome – Regional and Provincial	59
D. Outcome – Modern Coal Policy	62

I. EXECUTIVE SUMMARY

Since the Alberta government commenced its public engagement on a modern coal policy to guide coal exploration and development in the province, as a freehold mineral project Cabin Ridge has looked forward to engaging with the Committee on the potential for enhanced environmental protection and responsible coal development in the province. In this paper, Cabin Ridge outlines its history, values and viewpoints regarding resource development with focus on the status of coal mining and regulation prior to the implementation of the 1976 Coal Policy, the 1976 Coal Policy itself, and the current regulatory framework.

We also outline Cabin Ridge's recommendations for a modern coal policy that would help Alberta achieve its economic goals while simultaneously improving environmental and social outcomes through increased land protection, community benefits and exploring opportunities to advance Indigenous reconciliation.

About Cabin Ridge

Cabin Ridge is a privately held steel-making coal mining development company located in Calgary, Alberta. Cabin Ridge is a subsidiary within the Warburton Group. The Warburton Group is based in Perth, Australia and has had investments in Canada in resource development, infrastructure and aviation for almost 10 years. Cabin Ridge's sole steel-making coal property is located approximately 50 km north of Coleman on the traditional territory of the Treaty 7 First Nations and is on Category 2 land under the 1976 Coal Policy. Approximately 95% of Cabin Ridge's 4700 ha tenement is comprised of freehold mineral title coal. Cabin Ridge work coupled with previous exploration activity has provided an early indication that the property contains an economic reserve of steel-making coal of an unprecedented high level of quality, making it a world-class resource.

Since commencing its activities in 2020, Cabin Ridge has put considerable work into creating and implementing its principles and values. To that end, Cabin Ridge has articulated its vision of steel-making coal operations in the document "Responsible Modern Mining," located on our website at www.cabinridgecoal.com. Based on the Mining Association of Canada's initiative *Towards Sustainable Mining*, the document covers areas such as Indigenous and community relations, the environment, climate change, social performance, and corporate governance.

The Coal Policy Committee Consultation Process

In Cabin Ridge's view, the 1976 Coal Policy was a rational and necessary government response, filling what was otherwise a policy, scientific and regulatory vacuum. In the years prior to the introduction of the 1976 Coal Policy, coal mining operations in Alberta had begun a transition from underground to more surface operations and large uncertainty existed regarding the ability of these surface mining operations to successfully operate and reclaim land in a manner that left it productive and viable for wildlife and future generations. However, 35 years later -- and many successfully reclaimed mines plus dozens of provincial and federal policies and regulations later -- much has changed. The time is now to modernize coal policy in the context of current

regulation and seize a valuable opportunity to increase protected lands while developing resources responsibly.

Advances in Mine Reclamation and Regulatory Oversight

Since 1976, Alberta has repeatedly proven that mined landscapes can be reclaimed into viable and productive ecosystems, including examples in the Canmore area, Coal Valley, Gregg River Mine, the Cheviot Mine, and within the prairie regions. Robust policy and regulation have been at the centre of this success with today's *Alberta Land Stewardship Act, Responsible Energy Development Act, Coal Conservation Act, Environmental Protection and Enhancement Act, Public Lands Act, Water Act* as well as the federal *Fisheries Act, Species at Risk Act, Impact Assessment Act, Canadian Environmental Protection Act, and the Constitution Act* – all supporting Alberta in achieving these outcomes.

Balancing Economic, Environmental and Social Needs

In 1986, some 10 years after Alberta's 1976 Coal Policy was written, the United Nation's Brundtland Commission defined the term 'sustainable development' as development that meets the needs of the present without compromising the ability of future generations to meet their needs. Sustainability goals address global challenges, including poverty, inequality, climate change, environmental degradation, peace, and justice. Cabin Ridge believes this definition of sustainable development is the appropriate lens through which Alberta should view the opportunities and challenges related to steel-making coal development, and that a modern coal policy should aim to achieve sustainable development of resources, achieving the necessary balance between our economic, environmental and social needs.

Speaking to the economic and social needs, steel, with its major inputs being iron ore and steel making coal, helps improve the quality of life for millions of people around the world.

Macroeconomic modelling outputs show that the demand for steel will increase in the range of 20% over the next 25 years¹. On a local level, mining operations require skilled and trained workers, and employ a variety of operational and professional staff. Compensation in the mining sector is amongst the highest for industry in Canada, with average compensation being as high as \$123,000/year². Ensuring Indigenous people and local communities benefit from Cabin Ridge's investment is embedded in Cabin Ridge's core principles and we continue to engage and work with communities to understand and support their social and economic priorities.

Since the development of the 1976 Coal Policy some 45 years ago, much has changed in Canada and Alberta regarding coal usage. Due to significant elements such as climate change objectives, impacts from natural gas production and technology improvements in renewables, the usage of steam or thermal coal is being phased out in Canada and in many parts of the world. A review of the areas covered by the 1976 Coal Policy indicates that only a small fraction, being as low as

¹ Worldsteel Association, Steel Fact

² Facts and Figures 2019: The State of Canada's Mining Industry, The Mining Association of Canada

3%, actually encompasses steel making coal geological regimes. With a mutual goal of both increasing the quantum of lands in the eastern slopes where coal mining is not suitable, and recognizing that resource development is desirable for a variety of societal and economic reasons, it is the view of Cabin Ridge that the land categories be adjusted to recognize and address both goals. Through this assessment and undertaking, Alberta may choose to more than double those areas in the eastern slopes where coal mining is not desirable.

In closing, Cabin Ridge is pleased to participate in the Coal Policy Engagement. We submit through this process, the Alberta government should endorse a truly modern coal policy that reflects the present social, economic, and environmental values of Indigenous groups, Albertans, and industry stakeholders. This modern policy is already founded in the robust and comprehensive regulatory framework that exists for responsible and sustainable resource development in the province. Metallurgical coal development can be a key element to helping Alberta balance economic growth and environmental protection well into the future.

This position paper is submitted under the authority of the Board of Directors of Cabin Ridge Project Limited.

Brad Johnston

Chief Development Officer

Cabin Ridge Project Limited

II. OVERVIEW

On March 29, 2021, the Alberta government commenced its public engagement for the development of a modern coal policy to guide coal exploration and development in the province (“Coal Policy Engagement”).³ This engagement comes in the wake of the Alberta government reinstating its former coal policy, which was originally released on June 15, 1976 (the “1976 Coal Policy”).⁴

Cabin Ridge Project Limited (“Cabin Ridge”) looks forward to participating in the Coal Policy Engagement as an industry stakeholder and freehold mineral rights owner in the province. This paper introduces Cabin Ridge, its interest in responsible and sustainable coal development in Alberta, and its perspective on developing a truly modern coal policy: one that reflects a contemporary balance of the social, economic, and ecological values held by Indigenous groups, the Alberta public, and industry stakeholders today. Cabin Ridge has undertaken in this paper to present the following information to assist in preparing such a modern policy:

- A background on the factual and legal context in which the 1976 Coal Policy was developed;
- An in-depth review of the 1976 Coal Policy, including its purpose and contents;
- An overview of how the factual and legal contexts have changed over the last 45 years and given rise to a robust regulatory regime that currently governs coal development in Alberta; and Cabin Ridge’s position on the importance of a modern coal policy, and key elements it proposes should guide the development of this new policy.

III. CABIN RIDGE

Cabin Ridge is a privately-owned exploration and development company headquartered in Calgary, Alberta. It is a subsidiary of the Warburton Group, based out of Australia. The Warburton Group is a large, well-funded group with extensive and diverse international experience in the mining, real estate, agriculture, and aviation industries.

The Cabin Ridge management team is locally based and is dedicated to excellence in its approach to coal development in the province. Cabin Ridge’s approach includes a commitment to working

³ Government of Alberta, “Coal policy engagement” (March 29, 2021), online: <<https://www.alberta.ca/coal-policy-engagement.aspx>> [Engagement Announcement].

⁴ Government of Alberta, *A Coal Development Policy for Alberta* (June 15, 1976) [1976 Coal Policy]. The Coal Policy was rescinded effective June 1, 2020, and then reinstated on February 8, 2021 by way of Ministerial Order 054/2021: Government of Alberta, *Information Letter 2021-07: Reinstatement of the 1976 Coal Policy* (February 8, 2021), online: <<https://inform.energy.gov.ab.ca/Documents/Published/IL-2021-07.pdf>>.

with local communities and all levels of government as it assesses the potential for developing Alberta's world class metallurgical coal resources.

In 2020, Cabin Ridge began exploring the metallurgical coal resources it holds either in fee simple or pursuant to Crown leases, approximately 50 km north of Coleman, Alberta (the "Cabin Ridge Project" or "Project"). The area has a long history of coal development dating back to the late 1800s, and is recognized in the South Saskatchewan Regional Plan ("SSRP") for its significant potential for helping to meet the global demand for metallurgical coal.⁵ It bears noting that metallurgical coal (also referred to as coking coal or steel-making coal) is a key ingredient for the production of steel, which in turn is a vital component for products ranging from vehicles, buildings, and public infrastructure, to surgical tools, wind turbines, and hydroelectric dams. Canada is currently the third largest exporter of seaborne metallurgical coal in the world with the vast majority of this coal coming from Alberta and British Columbia.⁶

Cabin Ridge recognizes the significant opportunity for metallurgical coal development in Alberta and has invested fully in pursuing that opportunity. Currently, the Cabin Ridge Project is in the exploration phase. This phase consists primarily of exploration drilling, which began in the fall of 2020. Further drilling was to occur through 2021. However, Cabin Ridge has suspended this work as a result of the Minister of Energy's announcement of a moratorium on already approved exploration programs on Category 2 lands.⁷ Prior to the Minister's announcement, Cabin Ridge intended to spend approximately \$12 million on the 2021 drilling program, which would have supported 60 to 90 full time jobs. While expressing disappointment in the Minister's announcement, Cabin Ridge acknowledges the desire to pause exploration pending completion of the Coal Policy Engagement.

Concurrent with Cabin Ridge's exploration work is the development of a Preliminary Economic Assessment ("PEA"), which we anticipate will be delivered in mid-2021. The PEA will assess the economic potential of the project, and following the PEA, Cabin Ridge may conduct a Pre-Feasibility Study ("PFS") that involves more detailed planning and assessment, and this study could be completed by mid to late 2022. At all stages of the Project, Cabin Ridge has committed to meaningful consultation with Indigenous peoples and stakeholders. Work to date has confirmed that Cabin Ridge almost certainly has an economic reserve within its tenement.

⁵ Government of Alberta, *South Saskatchewan Regional Plan, 2014-2024* (amended May 2018) [SSRP].

⁶ Robin Campbell, "Canadian coal driving global growth" (June 1, 2018), *Canadian Mining Journal*, online: <<http://www.canadianminingjournal.com/features/canadian-coal-driving-global-growth/#:~:text=Canada%20is%20the%20world%27s%20third,%2C%20Chile%2C%20Brazil%20and%20India>>.

⁷ Announcement made on April 23, 2021: online: <<https://www.alberta.ca/release.cfm?xID=7801300005F6F-02C6-8BE0-44B167B8913C4304>>; see also Ministerial Order 093/2021 and its appended Coal Exploration Direction

Cabin Ridge is dedicated in its work to the principle of being a good neighbour, and to being a welcome and valued part of the communities and region in which it operates. This principle reflects Cabin Ridge's values and shapes how Cabin Ridge carries out its business enterprise, now and in the future. Cabin Ridge recognizes it can bring even more to the region in which it operates than simply the benefits associated with employment, property taxes, and royalties.

Cabin Ridge is further committed to the goal of delivering world-class safety, environmental, and social performance in its metallurgical coal mining operations. Aside from its internal standards for ensuring the achievement of this goal, Cabin Ridge is a member of the Mining Association of Canada (MAC) and will rely upon and abide by MAC's *Towards Sustainable Mining* initiative⁸, environmental management systems such as ISO 14001, Canada's and Alberta's robust regulatory frameworks applicable to coal mines, and stakeholder and Indigenous knowledge that Cabin Ridge will receive through the Project's development.

Cabin Ridge's vision – one that it views as closely aligned with Alberta's objectives – is to be a world class leader in sustainable resource development. To that end, and although the Cabin Ridge Project remains in its early stages, Cabin Ridge has begun to articulate its vision through a set of principles, including the following significant ones of note:

- a) **Climate Change:** Cabin Ridge acknowledges that climate change is real, and that Cabin Ridge has a role in helping to address this global challenge. Cabin Ridge will manage its greenhouse gas emissions and carbon footprint through all stages of the project cycle.
- b) **Water Stewardship:** access to clean water is a basic human right and critical for maintaining healthy ecosystems. Cabin Ridge will protect the watersheds in which it operates by minimizing water use and ensuring water that leaves its operations is clean and safe for people and aquatic life.
- c) **Indigenous peoples:** Cabin Ridge recognizes and respects Indigenous rights and the importance of reconciliation with Indigenous peoples. Cabin Ridge will meaningfully consult Indigenous communities in a respectful, open, and transparent manner. Cabin Ridge believes that Indigenous communities should participate in and benefit from its operations.
- d) **Waste:** Cabin Ridge will strive to minimize waste generated by its operations, and to further minimize the impacts of any such waste.
- e) **Health and Safety:** Cabin Ridge values the health, safety, and well-being of people above all else, including that of its employees, contractors, and surrounding communities.

⁸ Mining Association of Canada, "Towards Sustainable Mining", online: <<https://mining.ca/towards-sustainable-mining/>>.

- f) Diversity and Inclusion: Cabin Ridge values diversity and treats everyone with respect. Cabin Ridge believes in a diverse, inclusive, and respectful workplace, free from harassment, bullying, and racism.
- g) Human Rights: Cabin Ridge acknowledges that its activities, and those with whom Cabin Ridge does business, can positively or negatively impact human rights. Cabin Ridge is committed to operating with respect for internationally recognized human rights, including the distinct right of Indigenous Peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”).

Cabin Ridge looks forward to participating fully in Alberta’s Coal Policy Engagement to provide input on a modern coal policy for the province. Cabin Ridge is of the view that questions and concerns raised with respect to coal exploration and development are fair and appropriate, considering that development of any kind can potentially impact various aspects and uses of the province’s lands and waters. Cabin Ridge supports open and transparent engagement and regulatory processes, and an alignment of modern environmental policies with well-informed concerns and the objective of responsible and sustainable resource development.

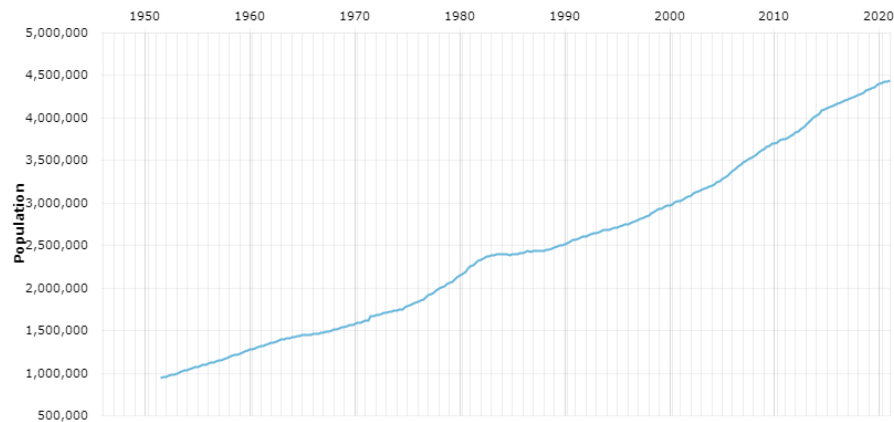
IV. BACKGROUND TO THE 1976 COAL POLICY

The Alberta government released its Coal Policy on June 15, 1976, approximately 45 years ago. To properly understand the 1976 Coal Policy and its suitability for guiding coal development in 2021 and beyond, Cabin Ridge believes it is necessary to consider the circumstances in which it was made, and how those circumstances have changed.

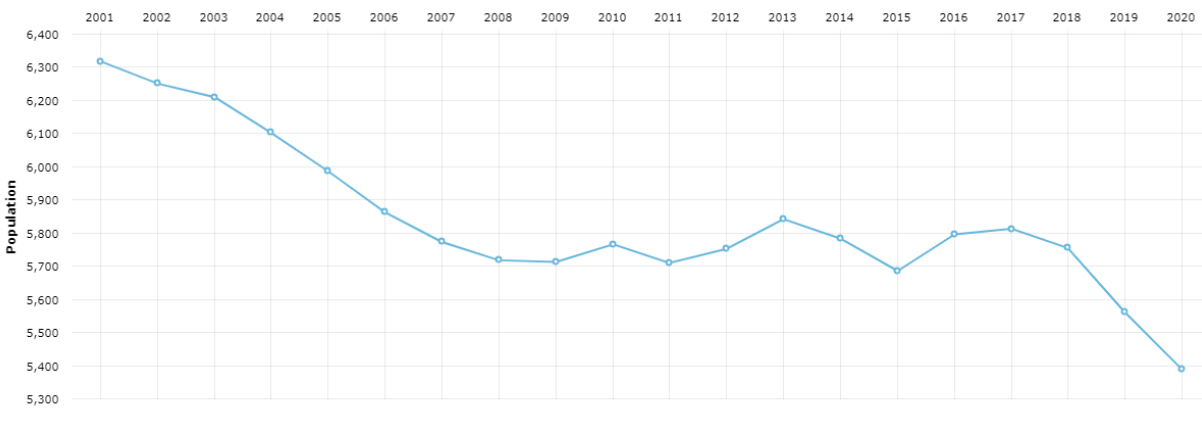
A. Population and Unemployment

In 1976, Alberta’s population was 1.9 million, with 75% of the population living in urban centers and 25% living in rural areas. The province’s population has more than doubled since that time, and is now over 4.4 million, with over 83% of the population living in cities and towns. The chart below shows Alberta’s population growth over the past seven decades:⁹

⁹ Government of Alberta, “Population” (March 18, 2021), online: <<https://economicdashboard.alberta.ca/Population>>; Government of Alberta, “Alberta Urban and Rural Population” (August 1, 2015), online: <<https://open.alberta.ca/opendata/alberta-urban-and-rural-population-1976-2011#summary>>.



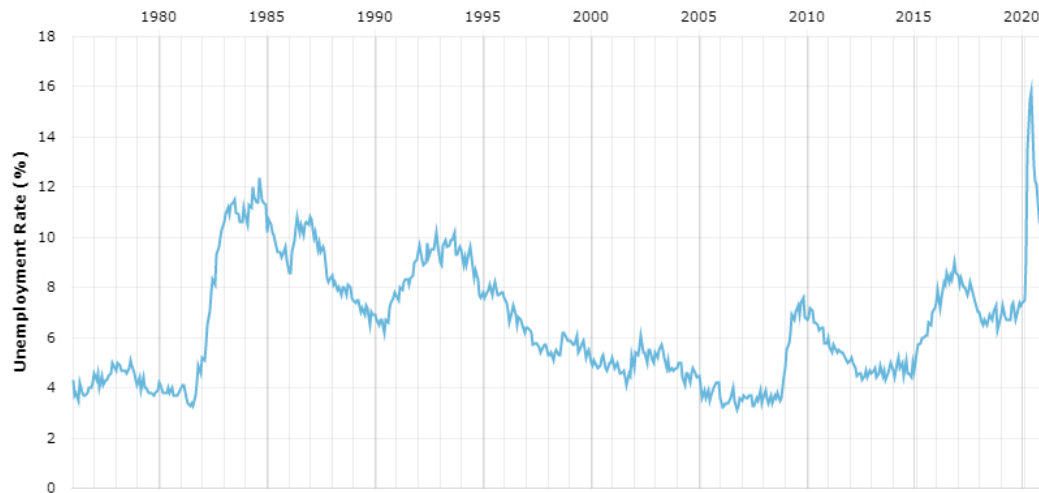
The population of the Municipality of Crowsnest Pass (“MCNP”), located approximately 50 km south of the Cabin Ridge Property, has tracked a different path than that of the province. Its population of approximately 7,000¹⁰ in 1976 has decreased to a little over 5,000.¹¹ The chart below shows the population trend over the last 20 years:



¹⁰ This estimate is based on the populations recorded for the communities that later amalgamated to form the MCNP: Government of Alberta, “1976 Official Population - Municipal Affairs”, online: <<http://www.municipalaffairs.alberta.ca/documents/ms/1976population.pdf>>. The communities that later amalgamated were the Town of Coleman, the Town of Blairmore, the Village of Bellevue, the Village of Frank, and Improvement Districts No. 5 and No. 6: Government of Alberta, “Municipality of Crowsnest Pass, Location and History Profile” (March 26, 2021), online: <<http://www.municipalaffairs.gov.ab.ca/cfm/MunicipalProfiles/index.cfm?fuseaction=BasicReport&MunicipalityType=SMUN&stakeholder=361&profileType=HIST&profileType=STAT>>.

¹¹ Government of Alberta, “Crowsnest Pass – Population” (March 25, 2021), online: <<https://regionaldashboard.alberta.ca/region/crowsnest-pass/population/#/?from=2016&to=2020>>.

In terms of employment, Alberta's unemployment rate in 1976 was approximately 3.8%, compared to the national average of 6.9%.¹² In February 2021, Alberta's unemployment rate was 9.9% compared to the national average of 8.2%. The chart below shows Alberta's unemployment rate since 1976:¹³



The most recent statistics published for the MCNP in 2016 showed an unemployment rate of 8.8%. The unemployment rate for the community has followed the same general trend as the province since the 1980s, while being higher than the provincial rate over the vast majority of that period.¹⁴

B. Coal Development

The history of coal development in Alberta up to the 1970s helps put into context the social and environmental motives for the 1976 Coal Policy.

Coal mining in Alberta predates the existence of the province itself. In fact, coal has been mined in the province since as early as 1835. Alberta's former Environment Conservation Authority ("ECA") – established in 1970 under *The Environment Conservation Act*¹⁵ – identified this history in the prospectus it issued for public hearings held in 1971 and 1972 to assess the impact of surface

¹² Statistics Canada, "Unemployment rates in Alberta and Canada" (February 6, 2016), online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/160205/cg-a003-eng.htm>>.

¹³ Government of Alberta, "Unemployment Rate" (March 12, 2021), online: <<https://economicdashboard.alberta.ca/Unemployment#alberta>>.

¹⁴ Government of Alberta, "Crowsnest Pass - Unemployment Rate" (updated March 25, 2021), online: <<https://regionaldashboard.alberta.ca/region/crowsnest-pass/unemployment-rate/#/>>.

¹⁵ SA 1970, c 36 [*Environment Conservation Act*].

mining in Alberta.¹⁶ The first commercial coal mines opened in the 1870s, with the first coal boom coming in the late 1890s with mass immigration and the settlement of western Canada. Around this time, mines were established in Canmore, the Crowsnest Pass, and the foothills south of Hinton and Edson (referred to as the “Coal Branch”).¹⁷

Coal production in the province increased steadily between the 1870s and the mid-1940s, with the exception of decreased production during the Great Depression in the late 1920s through to the early 1930s.¹⁸ Coal production then dropped sharply at the end of the 1940s and into the 1950s. This paralleled the discovery of large reserves of crude oil at Leduc in 1947; railways switching their fuel from coal to diesel; the adoption of natural gas in the place of coal for heating; and, the adoption of petroleum fuels and hydroelectricity for electrical power in the province.¹⁹ The figure below, taken from Liza Piper and Heather Green’s (“Piper & Green”) historical review of coal mining in Alberta illustrates trends in coal production in the province over this period:²⁰

¹⁶ Environment Conservation Authority, *The Impact on the Environment of Surface Mining in Alberta: Proceedings of the Public Hearings, December 1971-January 1972* (Edmonton: Environment Conservation Authority, March 1972) at Appendix A: A Prospectus for Public Hearings [*Public Hearing Proceedings*].

¹⁷ R Bott, G Chandler & P McKenxie-Brown, *Footprints: The Evolution of Land Conservation and Reclamation in Alberta* (Kingsley Publishing Services, 2016) at 67 [*Footprints*]; Liza Piper, “Coal in the Age of the Oil Sands” in *RCC Perspectives, No. 4, Environmental Knowledge, Environmental Politics: Case Studies from Canada and Western Europe* (Rachel Carson Center, 2016) 69 at 70 [Piper].

¹⁸ Piper at 70; Liza Piper & Heather Green, “A Province Powered by Coal: The Renaissance of Coal Mining in Late Twentieth-Century Alberta” (2017) 98:3 *The Canadian Historical Review* 532 at 540 [Piper & Green].

¹⁹ Piper & Green at 543; David W Lake, “A Study of Landscape Evolution in the Crowsnest Pass Region, 1898–1971” (PhD dissertation, University of Oklahoma, 1972) at 114-15 [Lake]; *Public Hearing Proceedings* at Appendix A; *Footprints* at 69.

²⁰ Piper & Green at 540.

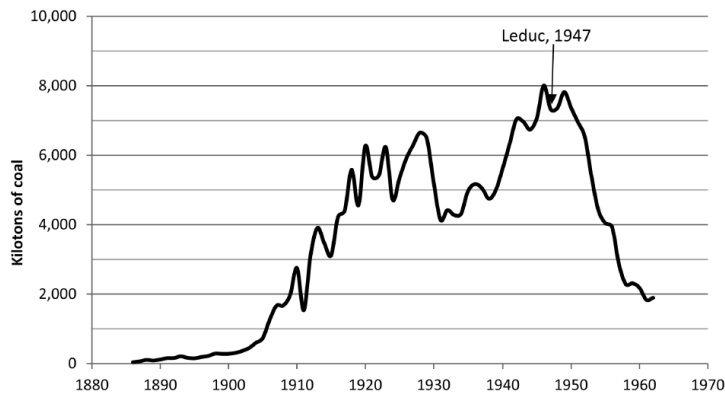


FIGURE I Coal production in metric kilotons, 1886–1962

Source: Data gathered from annual reports of the Alberta Mines Branch, the Alberta Mines Division, and the ERCB as well as from Alberta, Bureau of Statistics, *Facts and Figures* (Edmonton: Department of Industries and Labour, 1954).

In the 1960s, coal production increased once again in Alberta, at first slowly and then at a more dramatic pace approaching the 1970s. This increased production was buoyed by several factors including: provincial government measures to reduce rental fees and federal measures to finance the mechanization of mines; renewed local demand for coal as a fuel for electrical generation; growing overseas demand for steel-making coal, particularly in Japan; and, the ability of coal companies to transport coal at reduced costs and to produce coal with reduced labour costs and greater efficiency due to mechanization and a shift from underground to surface mining.²¹ The increased demand for coal at this time stimulated new and renewed mining activity in the Crowsnest Pass, Grande Cache, and the Coal Branch.²² The figure below, also from Piper & Green, illustrates the growth in coal production in the 1960s and beyond, following its decline through the 1950s:²³

²¹ *Public Hearing Proceedings* at Appendix A; Piper & Green at 557-58, 560; Lake at 134.

²² *Footprints* at 69.

²³ Piper & Green at 558.



FIGURE 5 Coal production in metric kilotons, 1886–2015
Source: Data gathered from annual reports of the Alberta Mines Branch, the Alberta Mines Division, and the ERCB; from ERCB, *Alberta Coal Industry Monthly Statistics* (Calgary: ERCB, 2000–2015); and from Alberta, Bureau of Statistics, *Facts and Figures* (Edmonton: Department of Industries and Labour, 1954).

The relatively rapid transition from underground to surface mining that followed World War II – made possible by the evolving development of diesel and electric-powered heavy equipment – gave coal mining an entirely new look in the 1960s and 1970s.²⁴ While surface mining had occurred previously in Alberta, it had never taken place on such an expansive scale. According to statistics compiled by Piper & Green, there were 66 surface coal operations that began and ended in Alberta before 1945, the vast majority of which were small, and they collectively contributed to approximately 1% of the total coal produced in the province before 1945. Production from these surface operations during that period paled in comparison to the over 752 underground coal mines that opened and closed before 1945.²⁵

The image of coal mining in the province changed rapidly between 1945 and 1971. In 1943, it is estimated that there were 168 underground mines and 36 surface operations in Alberta. By 1971, more coal was being produced in the province, but there were only 27 mines, five of which were underground and the other 22 of which were surface mines.²⁶ Looking to the Crowsnest Pass, specifically, David Lake noted in his 1972 dissertation paper, “A Study of Landscape Evolution in the Crowsnest Pass Region, 1898–1971” that it was only after 1942 that all coal companies operating in the area began surface mining coal.²⁷ This transition from underground to surface

²⁴ Piper & Green at 550-52.

²⁵ Piper & Green at 546.

²⁶ Piper & Green at 547.

²⁷ Lake at 97-99.

mining in the province, particularly between 1941 and the 1970s, is illustrated in the following chart from Piper & Green, showing surface mines opening while underground mines ceased operation:²⁸

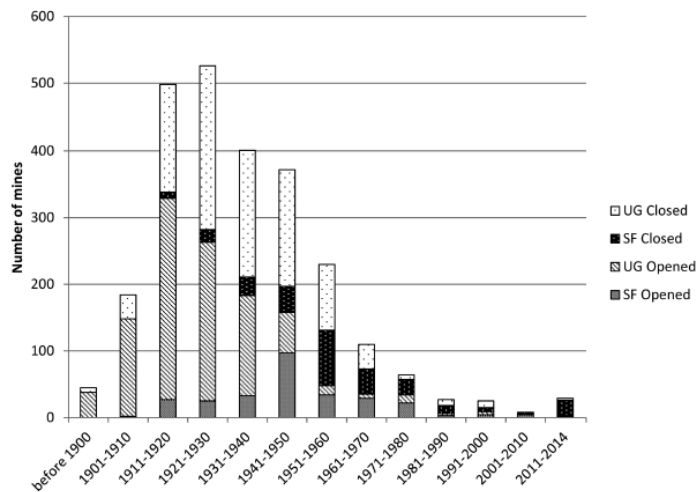


FIGURE 3A Underground (UG) and surface (SF) operations that opened and closed in each decade from 1900 to 2014

Through the 1960s and into the early 1970s, Alberta therefore saw a reduced number of coal mines, though the mines were increasingly large and producing greater volumes of coal. These mines also operated on the surface under the public eye, rather than underground. As noted by the ESA in its hearing prospectus from 1971, this period of mining was characterized by mining on a significantly larger scale than previously seen, and the visible change to the landscape – most notably in the mountains and foothills – was much more apparent to the public than ever before.²⁹

In addition, reclamation of surface mines in this period was in its infancy. Alberta had only enacted *The Surface Reclamation Act*³⁰ (“*Surface Reclamation Act*”), which introduced a statutory obligation to reclaim disturbed lands, in 1963.³¹ Before then, the province and its coal industry had a poor record of land reclamation, and this was the source of growing public concern.³² Groups

²⁸ Piper & Green at 549.

²⁹ *Public Hearing Proceedings*, Appendix A at 1016.

³⁰ SA 1963, c 64.

³¹ See Powter et al, “Regulatory history of Alberta’s industrial land conservation and reclamation program” (2012) 92 Can J Soil Sci 39 at 40-41 [Powter].

³² *Foothills* at 67, 69-71, 78; HG Stephenson & D Castendyk, “The Reclamation of Canmore Creek—An Example of a Successful Walk Away Pit Lake Closure” (August 25, 2019) at 3-4, online: < <https://jpt.spe.org/reclamation-canmore-creek-example-successful-walk-away-pit-lake-closure> > [Stephenson & Castendyk]; PS Elder, “The Participatory Environment in Alberta” (1974) 12:3 Alta L Rev 403 at 414-415 [Elder].

such as the Alberta Land Preservation Society³³ and the Society for Pollution and Environmental Control in 1969 submitted briefs to the Alberta government drawing attention to the lack of reclamation on surface mines in the province, with the latter group quoted as saying “that no strip mine in the foothills of Alberta has ever been reclaimed”.³⁴

Alberta literature also refers to a 1970 decision made by then Judge Rowbotham of Alberta’s District Court for expressing what appears to have been a common frustration with reclamation that took place under the *Surface Reclamation Act*.³⁵ In his decision, Judge Rowbotham held that Alberta’s Surface Reclamation Council had improperly issued reclamation certificates for private lands that a coal company had strip mined. While the decision was overturned on appeal, Judge Rowbotham’s commentary on the reclamation was noteworthy:

After hearing the evidence, after viewing the surface of the lands and inspecting them thoroughly by walking over them and after viewing adjacent and comparable land; in the area, it is my opinion that the condition of the surface of the lands in question is totally unsatisfactory. None of the topsoil was saved. The overburden was simply pushed over the hillsides into the valleys and streams below. The bare hardpan clay was left exposed for erosion after the coal had been removed. Run-off water laden with silt and coal dust was allowed to foul the streams. Much of the surface was covered with a heavy growth of Russian thistle and other noxious weeds which were allowed to blow and spread to adjoining lands.... Briefly the lands were left in a mess.³⁶

Not only were the basic statutory requirements for reclamation brand new and unsatisfactory to many Albertans, surface mine reclamation in the foothills and mountains was completely untested and unproven. Companies were just beginning in the 1970s to test reclamation practices and conduct research to determine how to return surface mines to land capable of supporting healthy streams and waterbodies, fish, wildlife, and multiple land uses for Indigenous peoples and the broader public.³⁷ It would be several years before coal companies and the public could refer to successful examples of mine reclamation at locations such as that of the Coal Valley Mine, the Grande Cache Mine, the Canmore Creek Mines, the Gregg River Mine, and the Luscar Mine.

³³ Alberta Land Preservation Society, *Coal Mining Damage in Alberta* (April 1969), online:

³⁴ Elder at 414.

³⁵ *Buchta v Surface Reclamation Council* (1970), [1971] 2 WWR 476, 1970 CarswellAlta 5 [*Buchta*], rev’d [1973] 6 WWR 577, 1973 AltaSCAD 69 (CanLII). Discussed in Elder at 415 and *Footprints* at 70-71.

³⁶ *Buchta* at para 3. A similar approach to mining and reclamation is described in Lake at 100, with respect to activity in the Crowsnest Pass.

³⁷ *Foothills* at 72-74, 82-85, 90; Stephenson & Castendyk at 3-4; Powter at 45; Terry Macyk, “Thirty Years of Reclamation Research in the Alpine and Subalpine Regions in Alberta, Canada” presented in the *Proceedings of the 26th Annual British Columbia Mine Reclamation Symposium* (Dawson Creek, BC, 2002) [Macyk].

It was in this context of “great concern and controversy” regarding rapidly expanding surface mines and reclamation unknowns that the ECA conducted public hearings on the environmental impact of surface mining in Alberta in the early 1970s.³⁸ It was also in this context that the Alberta government introduced early iterations of several pieces of legislation and policies in the mid-1970s to respond to the concerns raised, and put a pause on development where significant uncertainties remained.

C. Legislative Context

The Alberta government introduced several statutes and policies in the 1970s in response to public concerns regarding natural resource development and reclamation in the province.³⁹ These statutes and policies have since been significantly amended, replaced, or amalgamated, but they remain relevant to understanding the era in which the 1976 Coal Policy was developed.

1. Alberta Legislation

The Alberta statutes most relevant to environmental protection and land reclamation in relation to coal mining in 1976 can be briefly summarized as follows:

***The Alberta Heritage Act*⁴⁰**

The *Alberta Heritage Act* provided the Minister under the Act with the power to order the survey of heritage resources that could be disturbed by any activity, including coal mining.⁴¹

***The Clean Air Act*⁴²**

The *Clean Air Act* provided for limitations on the release of air contaminants. By 1980, the Act required a permit for the construction, and a licence for the operation, of any coal processing plant, and further required that coal processing plants comply with emissions standards set by regulation. Regulations enacted under the Act required the reporting of uncontrolled or unauthorized air contaminant releases and set out requirements for construction permits and operating licences.⁴³

³⁸ *Public Hearing Proceedings*, Appendix A at 1016.

³⁹ See generally *Footprints* at 74-76, Powder at 40

⁴⁰ SA 1973, c 5 [AHA].

⁴¹ AHA, s 22(b).

⁴² SA 1971, c 16, as amended.

⁴³ Discussed in: L Douglas Rae, “The Legal Framework for Coal Development in Alberta” (1982) 20(1) Alta L Rev 117 at 120-21 [Rae].

***The Clean Water Act*⁴⁴**

The Clean Water Act provided for limitations on the emission of water contaminants. By 1980, the Act required mine proponents to obtain a permit and operating licence for a coal processing plant; provided for the issuance of water quality control orders and stop orders; and, prohibited the deposit of deleterious substances in surface water or on a watercourse except as permitted by a mine's licence or permit.⁴⁵ The Alberta government also developed the *Alberta Coal Mining Waste Water Effluent Guidelines*, although not until two years after the 1976 Coal Policy was released.⁴⁶

***The Coal Conservation Act*⁴⁷**

The Coal Conservation Act required: a permit to carry out an exploratory program for coal, drill holes to a depth in excess of 500 feet and develop an excavation; a permit to develop a mine site; and a licence to commence mining operations. It also required the submission of a proposed reclamation scheme for lands that would be disturbed.

***The Coal Mines Safety Act*⁴⁸**

The Coal Mines Safety Act provided requirements for the operation of mines and processing plants to protect employee health and safety.

***The Forest and Prairie Protection Act*⁴⁹**

The Forest and Prairie Protection Act provided for: measures governing fire permits; fire safety; and debris and waste management to minimize the risk of forest fires.

***The Freehold Mineral Taxation Act*⁵⁰**

⁴⁴ SA 1971, c 17, as amended [CWA].

⁴⁵ This is discussed in Rae at 122, specific to the CWA as amended up to 1984.

⁴⁶ Rae at 122.

⁴⁷ SA 1973, c 65.

⁴⁸ SA 1974, c 18.

⁴⁹ SA 1971, c 36.

⁵⁰ SA 1973, c 89.

The Freehold Mineral Taxation Act provided for the assessment and taxation of coal mineral rights. A new schedule of royalties payable on coal produced from Crown leases and used or marketed also came into effect on July 1, 1976.⁵¹

The Land Surface Conservation and Reclamation Act⁵²

In 1973, the *Surface Reclamation Act* was repealed and replaced with the *Land Surface Conservation and Reclamation Act*. The Act and its associated regulations required a mine proponent to apply for a development and reclamation permit before commencing development.⁵³ The Act gave no definition of “reclamation” but provided for: the creation of consistent standards for the reclamation of public lands; financial security for specified disturbances returnable upon completed reclamation; orders issuable to direct the performance of reclamation or remediation work; and the issuance of reclamation certificates.⁵⁴

The Minister under the Act had the discretion to order a person to prepare and submit an environmental impact assessment (“EIA”) report for an activity likely to result in a surface disturbance.⁵⁵ However, there was no specific criteria to guide the Minister’s discretion; no activities for which an EIA was mandatory; and no legislation or regulations setting out the mandatory contents of an EIA report.⁵⁶

The Mines and Minerals Act⁵⁷

The Mines and Minerals Act set out provisions for the Crown to lease coal rights at an annual rent of \$1 per acre; requiring accounting for mined coal; and providing for the collection of royalties on coal leases.

The Public Lands Act⁵⁸

⁵¹ Rae at 135.

⁵² SA 1973, c 34 [*LSCRA*].

⁵³ See Rae at 119-20.

⁵⁴ Powter at 42. *LSCRA*, ss 30, 36, 39, 51, 53.

⁵⁵ *LSCRA*, s 8.

⁵⁶ This remained the case as of 1982: Rae at 120.

⁵⁷ RSA 1970, c 238.

⁵⁸ RSA 1970, c 297.

The Public Lands Act and regulations enacted under the Act provided for: authorization to enter upon the surface of public lands for specified purposes; dispositions such as licences of occupation, mineral surface leases, miscellaneous leases, and easement agreements; and discretionary power for the Minister to, by order, classify public lands and declare their use.

***The Surface Rights Act*⁵⁹**

The Surface Rights Act required the owners or lessees of coal resources to obtain the surface owner's and occupant's consent before entering upon the land to remove coal, and provided that should consent not be given, the coal rights holder could apply to the Surface Rights Board for a right of entry order.

***The Water Resources Act*⁶⁰**

The Water Resources Act governed the diversion or use of ground water and surface water resources and required permits for the use of water above specified quantities.⁶¹

2. Other Relevant Frameworks and Factors in 1976

At the federal level, the EIA process for projects involving federal decision-making responsibility was still under development in 1976. The federal government began its gradual development of a federal environmental assessment process in 1972 with the creation of a Task Force on Environmental Impact Policies and Procedure.⁶² Then, in 1974, federal Cabinet approved the main outlines of the proposed federal EIA process set out in the Environmental Assessment Review Process ("EARP"). The EARP did not have statutory basis until 1979, when the federal Minister of Environment was granted authority to establish and operate an EIA process and the EARP became formalized in the form of an Order in Council in 1984.⁶³

Early applications of the EARP in the 1970s are described as merely "administrative, "erratic", lacking "public confidence", and "new and untried".⁶⁴ By mid-1976, only one federal EIA had

⁵⁹ SA 1972, c 91.

⁶⁰ RSA 1970, c 388.

⁶¹ Rae at 120.

⁶² Judith B Hanebury, "Environmental Impact Assessment in the Canadian Federal System" (1991) 36:3 *McGill Law Journal* 962 at 969 [Hanebury].

⁶³ James Robertson, *Environmental Impact Assessment in Canada: Proposals for Change*, Background Paper: BP-219E (Library of Parliament, Research Branch, 1989) at 2-3 [Robertson].

⁶⁴ Hanebury at 970; Robertson at 3.

been completed.⁶⁵ It would be 15 years before the federal EIA process was drastically reformed by the first iteration of the *Canadian Environmental Assessment Act*.⁶⁶ It would be nearly 20 years before the federal legislation regarding the protection of migratory birds would be amended to create the *Migratory Birds Convention Act, 1994*⁶⁷ and it would be over 25 years before the enactment of the *Species at Risk Act*⁶⁸ (“SARA”).

In 1976, very little attention was given to Indigenous rights and interests. At that time, there was no *Constitution Act, 1982*.⁶⁹ It would therefore be several years before Canada’s Constitution came to expressly recognize and affirm existing Aboriginal and treaty rights.⁷⁰ It would also take decades for Supreme Court of Canada jurisprudence to firmly establish in Canadian law the *sui generis* nature of Indigenous rights and the duties governments have to Indigenous peoples arising from the honour of the Crown.⁷¹ It would be nearly 30 years before the Supreme Court discussed the nature of the Crown’s duty to consult with Indigenous peoples.⁷² These principles were all foreign to the drafters of the 1976 Coal Policy.

3. Conclusion on the Legislative Context

In 1976, the Alberta government was in the midst of completing an overhaul of its statutes and regulations relating to environmental protection and reclamation. It was just beginning to develop legitimate reclamation standards, EIAs, and informed land use planning to address uncertainties regarding surface mining and public concerns of the early 1970s. At that time, there was a compelling interest in further restricting or freezing development in some lands while the new legislative and regulatory frameworks were tested and improved upon, and while research was undertaken to reduce or eliminate uncertainties regarding surface mining, and reclamation. It was in this context that the Alberta government introduced the 1976 Coal Policy, inclusive of its land categories.

⁶⁵ Hanebury at 970.

⁶⁶ SC 1992, c 37 [*Canadian Environmental Assessment Act, 1992*].

⁶⁷ SC 1994, c 22.

⁶⁸ SC 2002, c 29 [SARA].

⁶⁹ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Constitution Act, 1982*].

⁷⁰ *Constitution Act, 1982*, s 35.

⁷¹ Seminal decisions included *Guerin v The Queen*, [1984] 2 SCR 335; *R v Sparrow*, [1990] 1 SCR 1075 [*Sparrow*]; *R v Van der Peet*, [1996] 2 SCR 507; *R v Badger*, [1996] 1 SCR 771; and, *R v Marshall*, [1999] 3 SCR 456.

⁷² *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 [*Haida Nation*].

D. The 1976 Coal Policy

1. Purpose

(a) Extrinsic Evidence

The 1976 Coal Policy does not expressly state its purpose and intent. It does, however, state that the Alberta government's overall policy for the development of Alberta's coal resources was "to bring and maintain the maximum benefits, now and in the future, to the people of Alberta who own this resource". It goes on to say that exploration and development would be encouraged in a manner that is "compatible with the environment", and that no development would be permitted unless the government were satisfied that it may proceed without "irreparable harm" and "with satisfactory reclamation of any disturbed lands". The Coal Policy set out that coal exploration and development would not be permitted in certain designated areas, while in others would be allowed broadly or only to a limited extent.⁷³ For any area that development would take place, the Coal Policy expressed its clear intent for there to be effective reclamation of plant and animal life on disturbed lands – reclamation that it differentiates from the kind that took place before 1973.⁷⁴

L. Douglas Rae, former national chair of the Environmental Law Section of the Canadian Bar Association and a former Director of the Alberta Environmental Law Centre emphasized the following about the limited intent of the 1976 Coal Policy in his 1982 article regarding the legislative framework for coal development in Alberta:

the coal policy in both its theoretical basis and its implementation and administration was not designed to be a legal document, but rather an administrative one. While portions of it have been legislated into existence, many aspects of the coal policy are enforced through administrative dictates rather than through any legal sanctions. In many instances discretion and flexibility take precedence over legal rights.⁷⁵

(b) Intrinsic Evidence and Context

As noted above, the Alberta government in the early 1970s tasked the ECA with a mandate that included conducting a review of policies, programs, and government agencies on matters pertaining to environmental conservation, and to hold public hearings pertaining to the same.⁷⁶ In carrying out this mandate, the ECA held public hearings and conducted consultation on a number

⁷³ 1976 Coal Policy at 3.

⁷⁴ See e.g., the emphasis on reclamation in the 1976 Coal Policy at 3, 5, 6, 7, 12-13, and the distinction it draws between what it envisions for reclamation after 1976, compared to what was required before 1973 at 7.

⁷⁵ Rae at 117.

⁷⁶ *Environment Conservation Act*, s 7(1).

of matters relating to resource development and conservation, including the impacts of surface mining in Alberta, and land use and resource development in Alberta's Eastern Slopes.⁷⁷

In the ECA's public hearings on the impact of surface mining in Alberta, a large number of environmental groups, individuals, municipalities, and industry stakeholders expressed their values and concerns regarding coal mining in the province. Common concerns included: the potential for permanent loss of recreational land uses; the need for integrated land use planning; public participation; water pollution; lack of research completed on high elevation mining and reclamation; doubts with respect to land reclamation; and, reclamation standards.⁷⁸ In the public hearing process, public advisory committees also made recommendations to the ECA primarily regarding: the requirement of reclamation plans for mine proponents; progressive reclamation; performance bonds for reclamation; re-vegetation of mine sites; public hearings for mines proposed in the proximity of protected areas; and, the prohibition of surface mining within a specified distance of streams.⁷⁹ The 1976 Coal Policy, along with the other legislation and policies developed in the 1970s and early 1980s regarding surface coal mining, were initial responses to many of the concerns raised in the ECA's hearings.

The ECA's public hearings that focused on land use and resource development in Alberta's Eastern Slopes further determined that public opinion at the time emphasized watershed protection and recreation priorities on public lands, and integrated land use planning. The Alberta government addressed these priorities by developing an "Eastern Slopes Policy",⁸⁰ first published in 1977 and then revised in 1984. The Eastern Slopes Policy recognized the various public land uses in the Eastern Slopes, and set out broad land categories for uses ranging from prime protection to multiple use, recreation, agriculture, and industry.⁸¹ It clarified that it was intended to be sufficiently flexible so that all future proposals for land use and development may be considered and that no legitimate proposals would be categorically rejected.⁸² The Eastern Slopes Policy states further that the 1976 Coal Policy is required to conform with the intent of the Eastern Slopes Policy.⁸³ The Alberta government thereby expressed the intention for the 1976 Coal Policy to be considered

⁷⁷ See generally Piper at 71-74; Elder at 409-16; *Public Hearing Proceedings* at Foreword.

⁷⁸ Environment Conservation Authority, *The Impact on the Environment of Surface Mining in Alberta: Summary of the Public Hearings, December 1971-January 1972* (Edmonton: Environment Conservation Authority, May 1972) [*Public Hearing Summary*]; see also Elder at 416-22.

⁷⁹ *Public Hearing Summary* at 198-200; *Public Hearing Proceedings* at Appendix C.

⁸⁰ Government of Alberta, *A Policy For Resource Management of the Eastern Slopes, Revised 1984* (Edmonton, 1984) ("Eastern Slopes Policy").

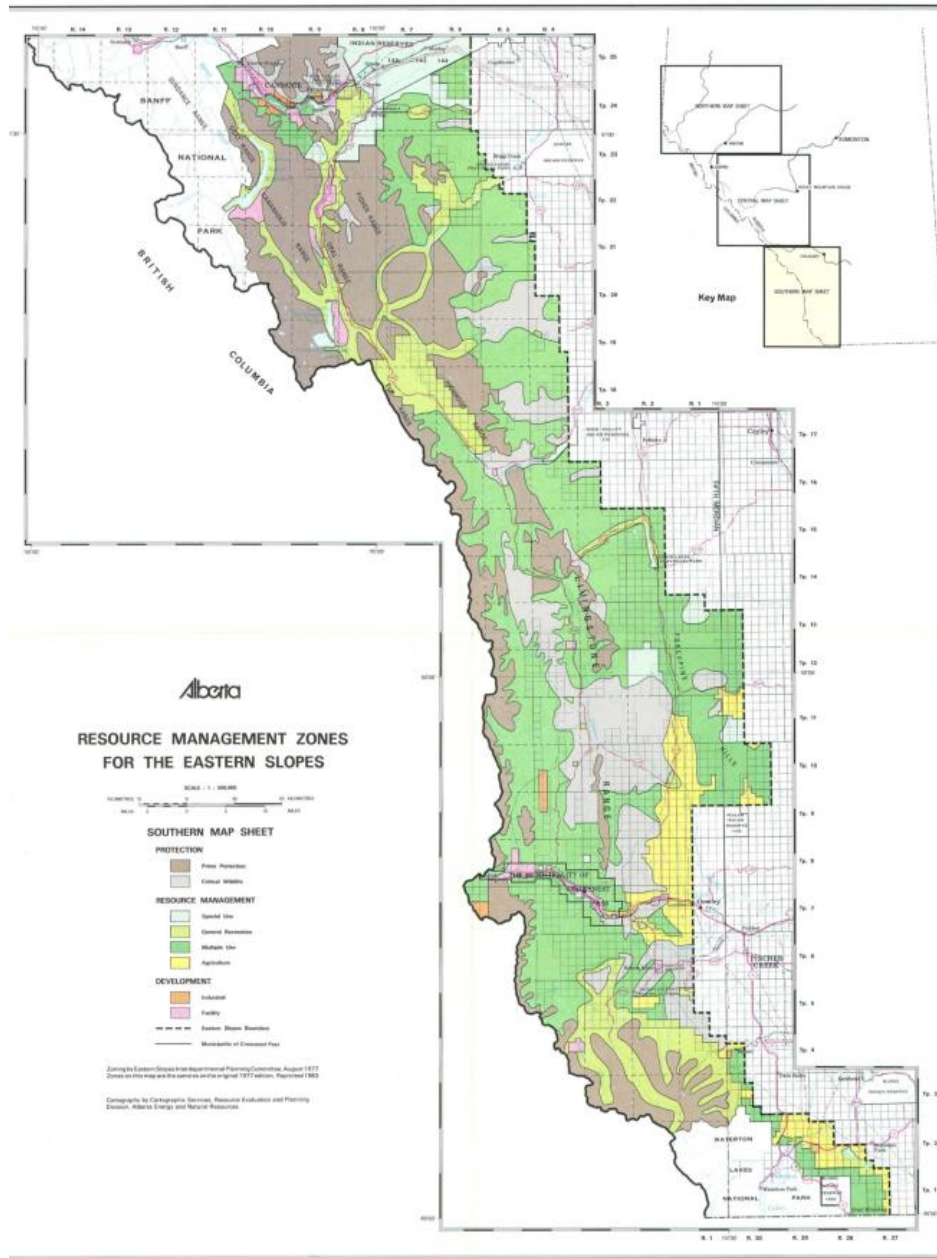
⁸¹ Eastern Slopes Policy at 10-12.

⁸² *Ibid* at Preface.

⁸³ *Ibid* at 5.

within the broader scope of integrated land use and resource management policies developed in support of both economic growth and environmental protection in the province.

The following is a map of resource management zones from the Eastern Slopes Policy, focused on the area in which the Cabin Ridge Project is being explored:



In Alberta's Legislative Assembly, Premier Peter Lougheed also remarked on the purpose of the 1976 Coal Policy. In October of 1976, he stated his view that the Coal Policy struck a balance

Cabin Ridge Project Limited – June 16, 2021
Coal Policy Consultation – Position Paper

between development and environmental protection. Rather than speak of the four categories of land set out in the Coal Policy, he spoke simply of two categories, those being: i) key areas where neither exploration or development would be permitted; and ii) areas in which there would be no development unless there could be full assurance of satisfactory reclamation. He noted that there was criticism that the Coal Policy went too far on the side of preservation. However, he contrasted that view with his opinion that the Coal Policy would not lead to inadequate coal development, and to Alberta's economic detriment.⁸⁴ Clearly, at least in Premier Lougheed's mind, the Coal Policy's intent was to strike a balance based on the economic and environmental concerns and uncertainties specific to 1976, and not to outright prohibit all future coal development.

(c) Conclusion on the 1976 Coal Policy's Purpose

As discussed above, coal development in Alberta increased rapidly in the late 1960s and early 1970s. There were fewer coal mines in the province than ever before, but they were larger, and they were operating on the surface. Moreover, mining was taking place in the foothills and mountains, and there were significant doubts remaining with respect to coal companies' abilities to reclaim these lands.

The Alberta government was enacting new legislation and policy targeting reclamation, EIAs, and broader environmental protections, but it could not be certain at the time that these would work to strike an appropriate balance. In the face of public concerns, specifically regarding development and reclamation in the Eastern Slopes, the Alberta government believed further measures were necessary to prohibit coal development in areas where land uses were known to be incompatible with coal development (i.e., Category 1 lands), and to temporarily restrict or delay mining in other areas (i.e., Category 2 and 3 lands), pending additional research, land use planning, and the testing of Alberta's new and developing environmental regulatory framework. The 1976 Coal Policy, and particularly its land classification system, was the tool used to fill that need.

2. Contents

The 1976 Coal Policy set out administrative procedures and policy elements to guide coal exploration and development. The administrative procedures regarding the application process and governing authority for coal exploration and development have been incorporated into or replaced by statutes, regulations, and Alberta Energy Regulator ("AER") manuals and/or directives.⁸⁵

The Coal Policy's "policy elements" discussed: environmental protection; compatibility with other land uses; surface rights; reclamation; use of Alberta's workforce, materials, and equipment; the

⁸⁴ Legislative Assembly of Alberta, *Hansard*, 18th Legislature, 2nd Session (October 13, 1976) at 1450-51.

⁸⁵ Examples include the current *Public Lands Act* and *Public Lands Administration Regulation*; the *Coal Conservation Regulation*; *Responsible Energy Development Act*; *Alberta Energy Regulator Rules of Practice*; *Environmental Protection and Enhancement Act*; *Manual 020: Coal Development*; and *Manual 008: Oil Sands and Coal Exploration Application Guide*.

importance of coal development for communities and infrastructure; resource transportation; coal royalties; investment opportunities for Albertans; time frames for development; benefit assessments; coal exploration rights; leasing provisions; safe and efficient development; resource appraisal; supply for different resource demands; pricing and marketing; job training; and, research and development. These policy elements are statements specific to the Alberta government's intended direction in 1976, and by 1982, it was noted that most aspects of the Coal Policy had already been incorporated into Alberta's regulatory framework.⁸⁶

The 1976 Coal Policy also included a land classification system which deserves further description given that it lies at the center of the Alberta government's current Coal Policy Engagement. The Coal Policy describes the land categories as follows:⁸⁷

- Category 1** in which no exploration or commercial development will be permitted. This category includes National Parks, present or proposed Provincial Parks, Wilderness Areas, Natural Areas, Restricted Development Study Areas, Watershed Research Study Basins, Designated Recreation Areas, Designated Heritage Sites, Wildlife Sanctuaries, settled urban areas and major lakes and rivers. These are areas for which it has been determined that alternate land uses have a higher priority than coal activity. Category 1 also includes most areas associated with high environmental sensitivity; these are areas for which reclamation of disturbed lands cannot be assured with existing technology and in which the watershed must be protected.
- Category 2** in which limited exploration is desirable and may be permitted under strict control but in which commercial development by surface mining will not normally be considered at the present time. This category contains lands in the Rocky Mountains and Foothills for which the preferred land or resource use remains to be determined, or areas where infrastructure facilities are generally absent or considered inadequate to support major mining operations. In addition, this category contains local areas of high environmental sensitivity in which neither exploration nor development activities will be permitted. Underground mining or in-situ operations may be permitted in areas within this category where the surface effects of the operation are deemed to be environmentally acceptable.
- Category 3** in which exploration is desirable and may be permitted under appropriate control but in which development by surface or underground mining or in-situ operations will be approved subject to proper assurances respecting protection of the environment and reclamation of disturbed lands and as the provision of needed infrastructure is determined to be in the public interest. This category covers the

⁸⁶ Rae at 117.

⁸⁷ 1976 Coal Policy at 14-17.

Northern Forested Region and eastern portions of the Eastern Slopes Region shown in Map 1 of Appendix 2. It also includes Class 1 and Class 2 agricultural lands in the settled regions of the Province. Although lands in this category are generally less sensitive from an environmental standpoint than the lands in Category 2, the Government will require appropriate assurances, with respect to surface mining operations on agricultural lands, that such lands will be reclaimed to a level of productivity equal to or greater than that which existed prior to mining.

Category 4 in which exploration may be permitted under appropriate control and in which surface or underground mining or in-situ operations may be considered subject to proper assurances respecting protection of the environment and reclamation of disturbed lands. This category covers the parts of the Province not included in the other three.

The 1976 Coal Policy gave several indications that the above categories were intended to be temporary, as highlighted by the following statements:

[Regarding Category 1 lands]: these are areas for which reclamation of disturbed lands cannot be assured with existing technology⁸⁸

[Regarding Category 2 lands]: commercial development by surface mining will not normally be considered at the present time⁸⁹

[Regarding criteria for Category 2 lands]: The preferred land or resource use remains to be determined⁹⁰

[Regarding criteria for Category 3 lands]: Potential land use conflicts remain to be resolved, especially with respect to agricultural lands⁹¹

the present classification, while based upon the best available knowledge, is subject to review in the light of changing knowledge and new technology related to environment protection, reclamation and mining methods⁹²

It is also notable that, in respect of coal leases issued on Category 1, 2 and 3 lands, the 1976 Coal Policy details a system whereby persons may sell back their leases to the Crown, or continue to

⁸⁸ *Ibid* at 15.

⁸⁹ *Ibid* at 15.

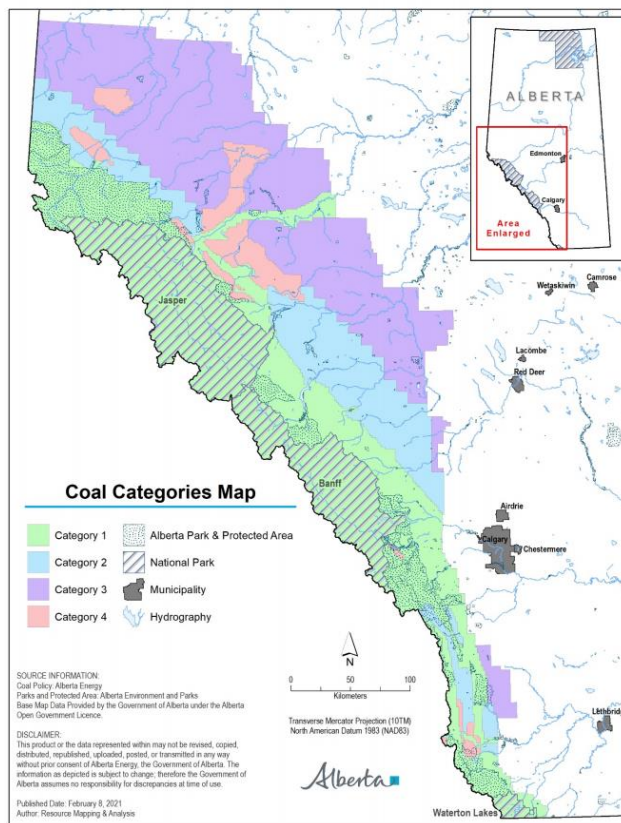
⁹⁰ *Ibid* at 18.

⁹¹ *Ibid* at 18.

⁹² *Ibid* at 17.

hold the leases, with both options at the discretion of the lease holder.⁹³ However, only for Category 1 leases will the Crown not renew the lease at the normal expiry date. The 1976 Coal Policy thereby draws a clear distinction between leases on Category 1 lands, which the government had no intention to renew, and leases on Category 2 and 3 lands, which the Coal Policy states the holders “may expect to be renewed”.⁹⁴ This is certainly an indication that the Alberta government at the time expected that the restrictions on Category 2 and 3 lands would be temporary, or at least be subject to amendment. Otherwise, there would be no purpose in the Crown renewing the leases on those Category 2 and 3 lands if there was no expectation that they would ever be developed, as was and is the case for Category 1 lands.

The following is a map of the land categories established under the 1976 Coal Policy:⁹⁵



⁹³ *Ibid* at 19.

⁹⁴ *Ibid* at 19.

⁹⁵ Alberta Energy, *Information Letter 2021-07: Reinstatement of the 1976 Coal Policy* (February 8, 2021), online: <<https://inform.energy.gov.ab.ca/Documents/Published/IL-2021-07.pdf>>.

Without expanding on how any factors or criteria were applied, the 1976 Coal Policy states that the land categories were made “having regard to the questions of environmental sensitivity, alternate land uses, potential coal resources and the extent of existing development”.⁹⁶ The Coal Policy provides detailed land classification for within the Eastern Slopes region, but does not indicate that any criteria were applied to delineate land categories outside the Eastern Slopes on any principled basis. This further suggests that the 1976 Coal Policy was in a fact a temporary land use classification system targeting only the Eastern Slopes. Land use classifications have since been updated for this area, most notably in the Eastern Slopes Policy and, in the southern portion, of this area, the SSRP.

The 1976 Coal Policy states that the Eastern Slopes region – within which the four land categories are set out – was defined by “an arbitrary boundary”. It goes on to say that lands between “the true physiographic eastern limit of the Foothills and the arbitrary eastern boundary of the Eastern Slopes region” were placed in Category 3, without giving any further reason for that placement.⁹⁷

Lands classified as Category 4, with the fewest restrictions on exploration and development, include lands located in the area referred to historically as the Coal Branch, and near Grande Cache. These lands are notably located in the foothills and mountainous terrain in the headwaters of the Athabasca and North Saskatchewan Rivers, and buttress Jasper National Park and Willmore Wilderness Park. Category 1 lands are delineated along the Athabasca River east of Hinton, but there is no indication in the maps contained in the Coal Policy that the land categories were otherwise designed with any regard to rivers, streams, or water bodies.

With respect to Category 2 lands, it is of interest that one reason in 1976 for designating at least a portion of those lands is that those areas exist “where infrastructure facilities are generally absent or considered inadequate to support major mining operations”.⁹⁸ A significant difference between 1976 and 2021 is that mining companies are now expected to bear any and all costs of infrastructure investment including power, water, road access or pipeline installation to support their eventual operations. Therefore, that criteria for Category 2 land designation has over time become an obsolete element respecting project development.

Ultimately, the rationale for delineating Category 1 lands was clear and understandable: to restrict development in protected areas, settled urban areas, and lands for which alternate land uses were already established and are not reconcilable with coal mining. The rationale for mapping all other categories appears to have been arbitrary and revealing of an intention for their relative restrictions to be temporary. Furthermore, the fact that the 1976 Coal Policy’s land classification system remains strictly internal to the Alberta government, with no incorporation into legislation or

⁹⁶ 1976 Coal Policy at 14.

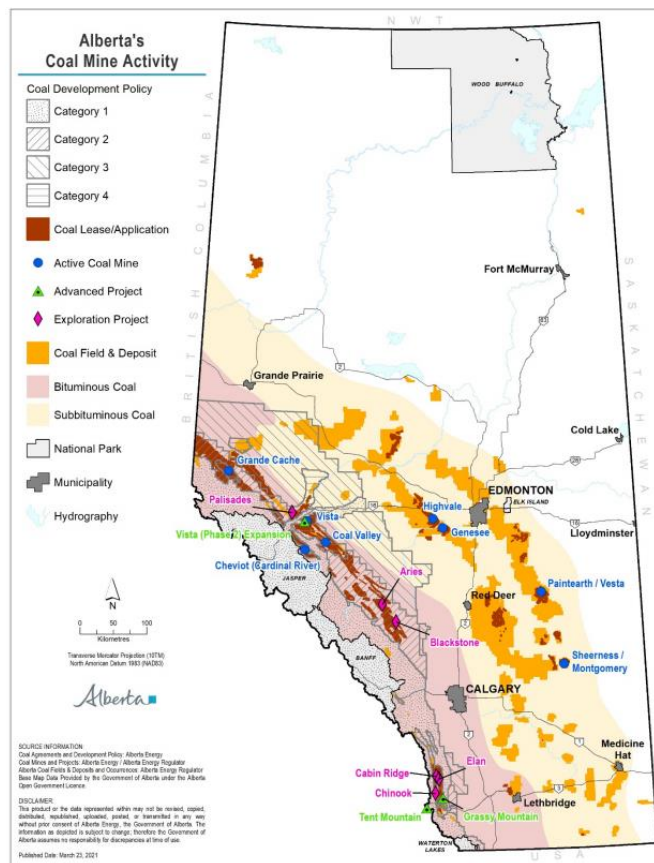
⁹⁷ *Ibid* at Appendix 2.

⁹⁸ *Ibid* at 18.

regulations over the last 45 years, also conveys the intention for the land categories, as defined in 1976, to be temporary measures.

E. Coal Development under the 1976 Coal Policy

Since the introduction of the 1976 Coal Policy, coal development has stalled south of the Coal Branch. Within the large areas of Category 4 lands located north and east of Jasper National Park, coal development has taken place at several locations including at the Grande Cache Coal Mine, Luscar Mine, Gregg River Mine, Cheviot (Cardinal River) Mine, Coal Valley Mine, and Vista Mine.⁹⁹ The following map shows coal mine activity in Alberta as of 2021:¹⁰⁰



⁹⁹ See the mines which are currently active at: Government of Alberta, “Coal in Alberta” (March 29, 2021), online: <<https://www.alberta.ca/assets/documents/energy-coal-in-alberta-factsheet.pdf>> [Coal in Alberta].

¹⁰⁰ *Ibid.*

The map below illustrates the relative coal production in Alberta before and after the issuance of the 1976 Coal Policy (developed by Piper & Green, and based on Alberta government statistics and AER data):¹⁰¹

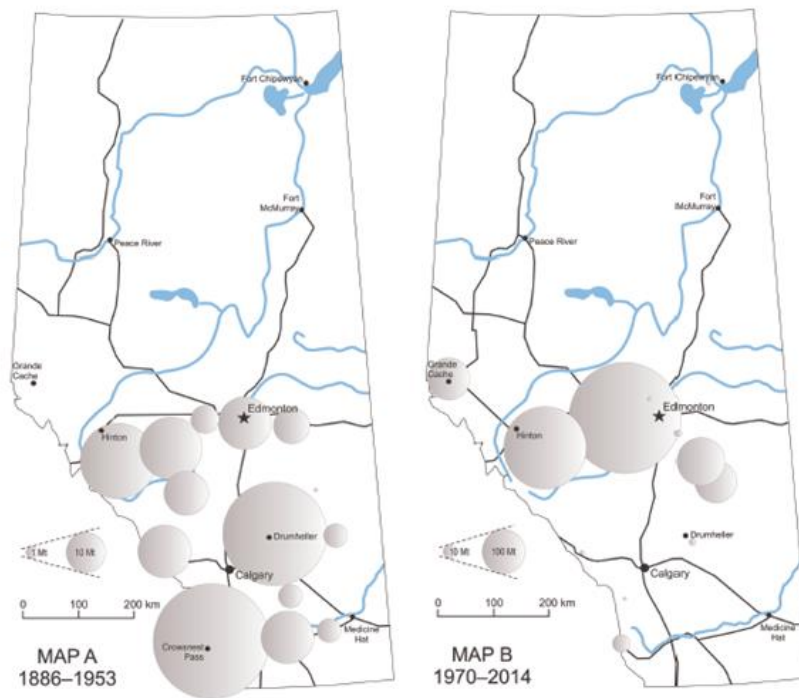


FIGURE 2 Relative coal production by region, 1886-1953 (Map A) and 1970-2014 (Map B). The areas of the circles are proportional to the tonnages produced. Note the change of scale from Map A to Map B.

The above maps demonstrate that the benefits of coal development have been concentrated in communities located near Category 3 and 4 lands. Over the last 45 years, these communities have been the beneficiaries of most of the direct and indirect employment opportunities from coal development in the province. Impact benefit agreements between coal companies operating in those areas and the local Indigenous groups have ensured that benefits from the coal mines have flowed to those groups and to their members.

Since the 1976 Coal Policy was issued, coal mines operating in the foothills and mountainous areas of the Eastern Slopes have also provided 45 years of research and evidence regarding water protection and successful reclamation. Below are a few examples.

At the time of the ECA's public hearings in the early 1970s regarding the impact of surface mining in Alberta, Canmore was the site of several un-reclaimed mine sites. Canmore Creek Mine Number

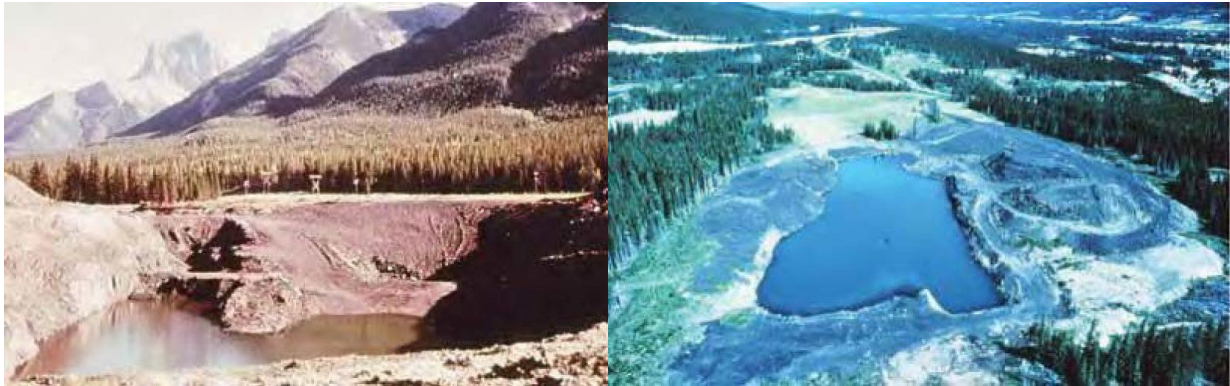
¹⁰¹ Piper & Green at 548.

2 and Number 3 were both open pits without any reclamation plans in 1972. Canmore Creek Mine Number 2 is shown below, first during backfilling that took place in 1972, and again post-reclamation in the mid-1970s:¹⁰²



Canmore Creek Mine Number 3 is shown below post-mining in 1974, then post-reclamation in the 1980s, and again more recently, as featured in Stephenson & Castendyk’s 2019 article, “The Reclamation of Canmore Creek—An Example of a Successful Walk Away Pit Lake Closure”:

¹⁰² Stephenson & Castendyk.



Canmore Creek Mine Number 3 after mining in 1973-1974.



Canmore Creek Mine Number 3, post-reclamation in 1982 (above), and more recently photographed below (now referred to as Quarry Lake).



The Coal Valley Mine, located approximately 80 km southwest of Edson and at about 1,400 m elevation was approved in 1976. It was the first Alberta mine to have a prescribed post-disturbance, forest end-land use. The images below show active operations occurring at the mine in 1985, followed by a view of a reclaimed mined-out pit at the site surrounded by young regenerating pine trees, and lastly, a view of the shoreline of a reclaimed mine pit at the site in 2013:¹⁰³



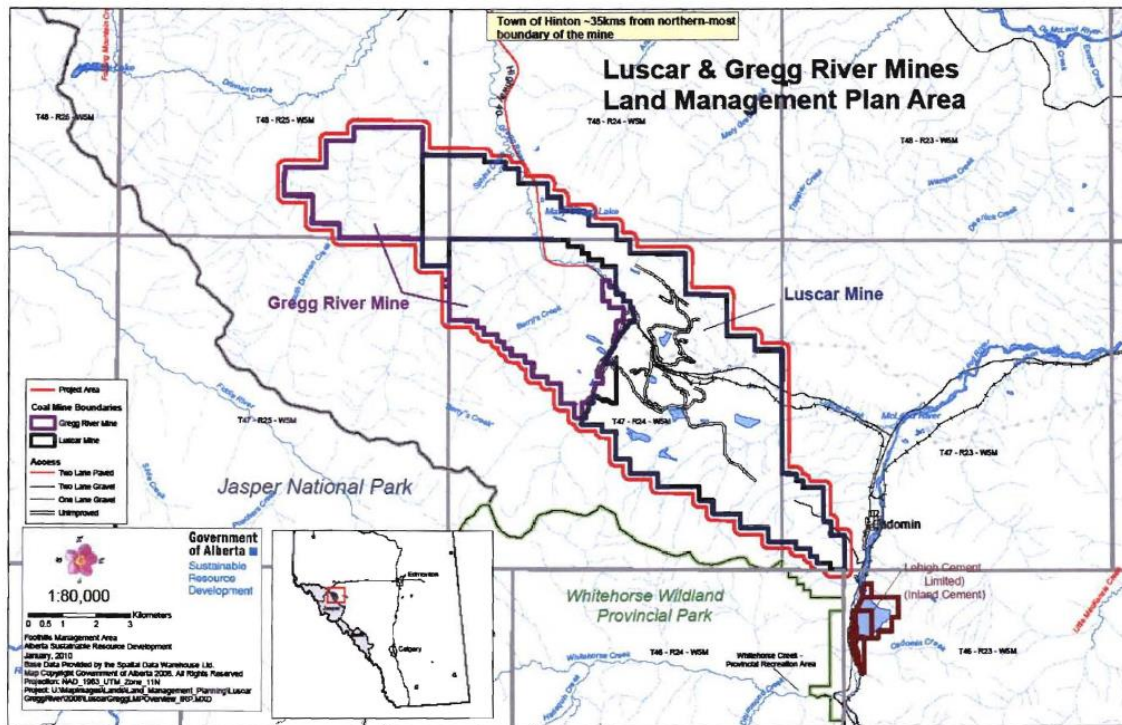
¹⁰³ These photos and background information are taken from *Footprints* at 83, and from Alberta Chamber of Commerce, *Caring for the Land* (2007) at 16, online: <<https://documents.techno-science.ca/documents/AlbertaChamberofREsources.pdf>>.



The Luscar and Gregg River Mines are located in the Coal Branch, approximately 43 km south of Hinton. Mining began on these sites in 1911, with open pit mining beginning in 1969. As of 2013, nearly the entire disturbed area of the Gregg River Mine, and approximately 50% of the Luscar Mine was reclaimed. The reclaimed lands were designed to provide for watershed protection and wildlife habitat, and are now frequented by species including Rocky Mountain bighorn sheep, moose, deer, elk, and Grizzly bears, among many others.¹⁰⁴ The *Luscar & Gregg River Mines Land Management Plan*, issued by the Alberta government in 2013 for management of the reclaimed lands before and after it reverts back to the provincial Crown, includes a map showing the proximity of the Mines to the community of Cadomin, Jasper National Park, Whitehorse Wildland Provincial Park, and the McLeod River, which flows into the Athabasca River near Whitecourt.¹⁰⁵

¹⁰⁴ Government of Alberta, *Luscar & Gregg River Mines – Land Management Plan* (March 2013) at 3-4, online: <<https://open.alberta.ca/publications/luscar-gregg-river-mines-land-management-plan-regional-integrated-decision>> [*Luscar & Gregg River Management Plan*].

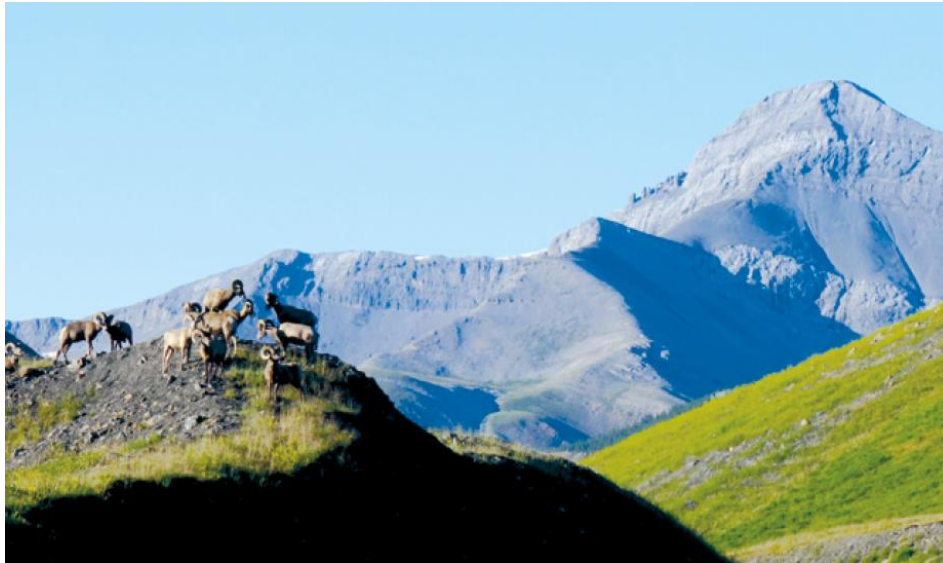
¹⁰⁵ *Luscar & Gregg River Management Plan* at Appendix A.



Below are images of reclamation at the Luscar and Gregg River Mines:



Former open pit, reclaimed to form Sphinx Lake, at the Luscar Mine.¹⁰⁶ Also visible in this image is the use of rough mounding and revegetated terrain, techniques developed to reduce compaction and erosion and to provide microsites for vegetation.¹⁰⁷ Many other reclamation practices and techniques have been developed through 30-plus years of research at the Grande Cache Coal Mine and other Alberta coal mines.¹⁰⁸



Rocky Mountain bighorn sheep at the Luscar Mine in 2014.¹⁰⁹

¹⁰⁶ Footprints at 66; Teck Resources Limited, “Reclamation Example: Making a Mine Pit into an Aquatic Habitat” (2016), online: <<https://www.teck.com/news/stories/2016/reclamation-example--making-a-mine-pit-into-an-aquatic-habitat>>.

¹⁰⁷ Discussed in *Footprints* at 89.

¹⁰⁸ See e.g. Macyk; *Footprints* at 72-73, 82.

¹⁰⁹ *Footprints* at 84.



Rocky Mountain bighorn sheep grazing on reclaimed lands. Studying sheep in this area led to recommendations for maintaining high, steep excavated rock faces adjacent to foraging areas to optimize habitat availability.¹¹⁰



¹¹⁰ *Ibid* at 87-88.

Reclaimed lands at the Gregg River Mine, exhibiting a mix of open regenerating vegetation and patches of mature forest cover, important for wildlife habitat and movement.¹¹¹

Since the 1970s, there has also been significant research and testing completed to develop practices for minimizing the potential leaching of water contaminants – most notably, selenium (or “Se”) – at coal mines. Research has included the work of the Alberta government, the Alberta Selenium Working Group, academics, and industry in the assessment of monitoring results from operating coal mines and the testing of emerging technology and practices.¹¹² Notably, issues regarding Se leaching have been detected in legacy mining operations, including some coal mines located in British Columbia. Any new coal mines in Alberta can be designed from the outset using technology and practices developed over the last 45 years to effectively manage the risk of Se leaching, and these mines face strict requirements for the development of Se monitoring plans, and for ongoing monitoring to detect any departure from baseline and modelled results. Referencing the paper “Se Management for AB Coal Mines – the state of practice”, independently prepared by Guy Gilron, RPBio and Dr. Gord McKenna, PEng and submitted to the panel, it is evident that much progress has been and can be made respecting Se management and treatment in coal mining operations. Key to success is employing a multi-stage approach at both the design and operating phases of the mine.

From a control standpoint, regulators can tie Se management to ongoing operations to ensure compliance with standards of release. Post-mining, a company’s obligation to manage a site only concludes with the receipt of the final reclamation certificates for that site. It is through that process that regulators can ensure that Se management continues after mine operations so that

¹¹¹ *Ibid* at 90.

¹¹² See e.g.,: Selenium Fish Science Panel, *Report to the Selenium Working Group Workshop, October 9-11, 2007, Hinton, AB* (submitted to Alberta Environment), online: <<https://open.alberta.ca/publications/alberta-selenium-working-group-acceptance-of-final-report-of-selenium-fish-science-panel-workshop>>; Luscar and Gregg River Mines Land Management Plan – Factsheet, online: <<https://open.alberta.ca/dataset/1e417f69-91b6-4617-a983-c1ce9c2befd6/resource/dc56ac84-2c83-40f0-a8cb-419a5b8f4481/download/luscargreggriverminesplan-factsheet.pdf>>; Rob Sonnenberg, *Development of aquatic communities in high-altitude mine pit lake systems of west-central Alberta* (2011), Masters Thesis, online: <<https://opus.uleth.ca/handle/10133/3106>>; WC Mackay, “Selenium Concentrations in the Tissues of Fish from the Upper McLeod and Upper Smoky River Systems” (September 2006), prepared for Alberta Sustainable Resource Development and Alberta Environment, online: <<https://open.alberta.ca/dataset/762754c7-f30a-472d-a991-6c535b9e0eed/resource/140e7841-e359-4ace-bbf1-da339506304d/download/3937754-2006-selenium-concentrations-tissues-fish.pdf>>; Ryan Schipper & Tom Rutkowski, “Three-year Pilot Case Study of Biochemical Reactor” (2012), online: <<https://pdfs.semanticscholar.org/9efe/9d211ac8a94b7245c6c079cfec150aa0a328.pdf>>; Billie O'Brien & Justin Straker, *Teck Coal Limited – Reclamation Research Summary 1969–2010*, (2010) online: <<https://ceaa-acee.gc.ca/050/documents/p65505/100385E.pdf>>; Teck Resources Limited, *MacKenzie Redcap Application* (2018), Appendix 8 – Approved Management Plans, Selenium Management Plan at ch 6.0 (Selenium Management Performance Results), online: <https://dds.aer.ca/iar_query/ApplicationAttachments.aspx?AppNumber=1909318>.

acceptable levels of discharge continue to be achieved prior to a company being released from its ongoing obligations.

V. CURRENT LEGISLATIVE FRAMEWORK FOR COAL DEVELOPMENT IN ALBERTA

The legislative framework that applies to coal exploration and development in Alberta is expansive, robust, and designed to further the efficient, safe, orderly, and environmentally responsible development of Alberta's resources. It is a framework developed through learnings and values that have evolved over the last 45 years, and is one that balances economic growth and environmental protection. Unlike the preliminary framework developed in the 1970s to parallel the emergence of surface mining and concerns mounting over untested and unproven reclamation, the existing regime fulsomely addresses concerns regarding: public land use; thorough and principled EIAs, public scrutiny of coal mining approvals; Indigenous rights; and reclamation. These concerns are particularly well addressed at the current time when full account is given to legislation and policy at both the provincial and federal levels; requirements for Indigenous consultation; and Alberta's land-use framework.

Of note is that every single piece of legislation discussed above that related to coal development in 1976 has since either been significantly amended or completely replaced. Below we specifically mention nearly 20 current statutes and regulations, among numerous others, that have been introduced or overhauled since 1976, not including the many policies and guidelines introduced or updated over the last 15 years. The following sections outline that the framework in place for regulating coal mining in Alberta is strong, comprehensive, and thorough. Albertans can be satisfied that the current system applies a robust review to all proposed coal projects, as demonstrated in the AER's review of the Vista Mine, and the ongoing joint federal-provincial review of the proposed Grassy Mountain Coal Project ("Grassy Mountain"). Cabin Ridge is proposing no lessening of the current regulatory processes as described herein.

A. Provincial Framework

In 2013, with the passing of the *Responsible Energy Development Act* ("REDA"),¹¹³ the AER became the single regulator of energy development in Alberta.¹¹⁴ REDA was enacted to simplify and consolidate Alberta's environmental regulatory framework by centralizing the management of

¹¹³ SA 2012, c R-17.3 [REDA].

¹¹⁴ The AER has assumed all the functions of the former Energy Resources Conservation Board and the functions of Alberta Environment and Sustainable Resource Development (the predecessor of Alberta Environment and Parks) regarding public lands, water, and the environment: Alberta Energy Regulator, "Who We Are", online: <<https://www.aer.ca/providing-information/about-the-aer/who-we-are>>.

air, water, land, facility, and mine authorizations in the AER. Under *REDA*, the AER is responsible for administering “energy resource enactments” and “specified enactments.”¹¹⁵

The *Coal Conservation Act* (“CCA”)¹¹⁶ and any regulations or rules made thereunder are each an “energy resource enactment.”¹¹⁷ The *Environmental Protection and Enhancement Act* (“EPEA”),¹¹⁸ the *Public Lands Act* (“PLA”),¹¹⁹ the *Water Act*¹²⁰ and any regulations referred to in those Acts are each a “specified enactment”.¹²¹ These energy resource enactments and specified enactments are pivotal to the regulation of coal development in Alberta. Any new commercial coal mining project in Alberta will typically require regulatory approvals for a mine permit, coal processing plant, and mine and dump licences under the *CCA*; an approval for a mine and coal processing plant under s. 66 of the *EPEA*; an approval and water licence under ss. 38 and 51 of the *Water Act*; and, a mineral surface lease, licence of occupation, and miscellaneous lease pursuant to the *PLA* for the surface disturbance associated with the mine, roads, and processing plant, respectively.

Of the above statutes, only the *CCA* and the *PLA* were enacted prior to the introduction of the 1976 Coal Policy. The *PLA* was originally enacted in 1949,¹²² and the *CCA* was enacted in 1973.¹²³ However, both the *CCA* and the *PLA* have undergone a series of substantive amendments since the introduction of the 1976 Coal Policy,¹²⁴ both becoming materially different legal instruments compared to the versions in force in 1976.

¹¹⁵ *REDA*, s 2(2).

¹¹⁶ RSA 2000, c C-17 [*CCA*].

¹¹⁷ *REDA*, s 1(1)(j) (i), (vii).

¹¹⁸ RSA 2000, c E-12 [*EPEA*].

¹¹⁹ RSA 2000, c P-40 [*PLA*].

¹²⁰ RSA 2000, c W-3 [*Water Act*].

¹²¹ *REDA*, s 1(1)(s)(i)-(iii), (v).

¹²² Bill 112, *An Act Respecting Public Lands*, 1st Sess, 11th Leg, Alberta, 1949; *The Public Lands Act*, SA 1949, c 81.

¹²³ Bill 58, *The Coal Conservation Act*, 2nd Sess, 17th Leg, Alberta, 1973, c 65 (assented to October 30, 2073); *The Coal Conservation Act*, SA 1973, c 65.

¹²⁴ Substantive amendments include:

Bill 48, *The Coal Conservation Amendment Act*, 1st Sess, 18th Leg, Alberta, 1975; Bill 20, *Coal Conservation Amendment Act*, 4th Sess, 19th Leg, Alberta, 1982; Bill 39, *Miscellaneous Statutes Amendment Act*, 3rd Sess, 24th Leg, Alberta, 1999; Bill 28, *Energy Statutes Amendment Act*, 2nd Sess, 27th Leg, Alberta, 2009; Bill 16, *Energy Statutes Amendment Act*, 4th Sess, 27th Leg, Alberta, 2011; Bill 2, *Responsible Energy Development Act*, 1st Sess,

Additionally, the *Coal Conservation Rules*,¹²⁵ which set out the specific filing requirements for applications under the CCA were not introduced until 1981. The AER's *Manual 008: Oil Sands Coal Exploration Application Guide* was released on August 19, 2014, and the AER's *Manual 020: Coal Development* was released on August 7, 2020, to provide further guidance on the submission requirements, application process, and evaluation criteria for development of coal resources in the province. The AER's *Directive 61: How to Apply for Government Approval of Coal Projects in Alberta (1983)*, seven years the junior of the 1976 Coal Policy, was rescinded in 2020, to properly reflect that its dated contents (which had been superseded or replaced over the past four decades) had become irrelevant.

Under the PLA, the *Public Lands Administration Regulation*¹²⁶ was enacted in 2011. The Regulation addresses land management, access, compliance and enforcement, and appeals and dispute resolution with respect to public lands in Alberta.

As noted above, Alberta currently has a robust and comprehensive environmental assessment scheme and specific obligations regarding land reclamation. The Alberta government first introduced the EPEA in 1992¹²⁷ to provide a consolidated and comprehensive framework for environmental protection in Alberta by replacing the *Agricultural Chemicals Act*; *Beverage Container Act*; *Clean Air Act*; *Clean Water Act*; *Ground Water Development Act*; *Hazardous Chemicals Act*; *Land Surface Conservation and Reclamation Act*; and, the *Litter Act*; as well as selected portions of the *Department of the Environment Act*.¹²⁸ In doing so, the EPEA implemented a single application process for those seeking environmental approval for activities that may have material impacts on the environment.¹²⁹

28th Leg, Alberta, 2012; Bill 17, *The Public Lands Amendment Act*, 3rd Sess, 18th Leg, Alberta, 1977; Bill 9, *The Public Lands Amendment Act*, 1st Sess, 19th Leg, Alberta, 1979; Bill 10, *The Public Lands and Wildlife Statutes Amendment Act*, 1st Sess, 19th Leg, Alberta, 1979; Bill 6, *The Public Lands Amendment Act*, 4th Sess, 19th Leg, Alberta, 1982; Bill 38, *Public Lands Amendment Act*, 2nd Sess, 20th Leg, Alberta, 1984; Bill 49, *Public Lands Amendment Act*, 3rd Sess, 25th Leg, Alberta, 2003; Bill 2, *Responsible Energy Development Act*, 1st Sess, 28th Leg, Alberta, 2012; Bill 16, *Public Lands Modernization (Grazing and Obsolete Provisions) Amendment Act*, 1st Sess, 30th Leg, Alberta, 2019.

¹²⁵ Alta Reg 270/1981.

¹²⁶ Alta Reg 187/2011.

¹²⁷ Bill 23, *Environmental Protection and Enhancement Act*, 4th Sess, 22nd Leg, Alberta, 1992.

¹²⁸ Martin Kaga, "Provincial Regulation of Natural Resource Exploitation" (2002) 28 Can-US LJ 357 at p 364; Neil J. Brennan, "Private Rights and Public Concerns: The 'Public Interest' in Alberta's Environmental Management Regime" (1997) 7 J Env L & Prac 243 at p 271.

¹²⁹ *Ibid.*

The *EPEA* contains a Schedule of Activities which may be subject to an EIA and the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*¹³⁰ provides a list of mandatory activities, for which an EIA must be completed.¹³¹ The development of any surface coal mine producing more than 45,000 tonnes per year of coal, or the development of any coal processing plant within the meaning of the *CCA*, is a “Mandatory Activity” and, as such, requires an EIA.¹³²

Under s. 45 of *EPEA*, the Director also has the discretion to require a proponent to prepare an EIA report. Under s. 47, the Minister has the further discretion to deem that an EIA report is necessary. If an EIA report is required, the proponent must prepare and submit it in accordance with the provisions of *EPEA*.¹³³ Since the *REDA* came into force in 2013, the AER has been responsible for reviewing environmental assessments related to coal development in the province.

Where an EIA report is required, s. 49 of *EPEA* sets out the information that must be provided, such as the site selection procedure for the proposed activity, including a statement of the reasons why the proposed site was chosen and a consideration of alternatives.¹³⁴ Arguably, this helps obviate the need for broad land categories, such as those included in the 1976 Coal Policy, promoting a more principled site-specific approach to assessing the appropriateness of coal and other resource development.

If the AER issues an approval for a coal mine project under the *EPEA*, it will identify the applicant’s obligations and responsibilities regarding reclamation, relative to air, water, land, and biodiversity.¹³⁵ The *EPEA* also sets out the duty of operators, including operators of a coal mine or coal processing plant, to conserve and reclaim specified land and obtain a reclamation certificate in respect of all requisite conservation and reclamation.¹³⁶ Only companies with a reclamation certificate can close their projects and end their surface leases.¹³⁷

¹³⁰ Alta Reg 111/1993 [*Mandatory Activities Regulation*].

¹³¹ *EPEA*, s 44(1)(a).

¹³² *Mandatory Activities Regulation*, Schedule 1(g); *EPEA*, s 44(1)(a).

¹³³ Alberta Energy Regulator, *Manual 020: Coal Development* (August 2020) [*AER Manual 020*] at PDF 14.

¹³⁴ *EPEA*, s 49(b).

¹³⁵ *AER Manual 020* at PDF 9.

¹³⁶ *EPEA*, s 137(1).

¹³⁷ *AER Manual 020* at PDF 9.

EPEA reclamation certificate applications must be prepared in accordance with the *Conservation and Reclamation Regulation*.¹³⁸ A reclamation inquiry is conducted to ensure that the conditions of the reclaimed land represent the conditions described in the application, and to validate that the reclamation was completed as reported by the operator.¹³⁹

Within six months of a coal processing plant, or an entire coal mine, ceasing operation, the approval holder must apply for an amendment to their *EPEA* approval for decommissioning and reclamation of the plant and final closure of the mine.¹⁴⁰ If issued, the terms and conditions of the *EPEA* approval will provide further site-specific requirements for decommissioning and reclamation.¹⁴¹ It is only with the issuance of a reclamation certificate that an operator can then apply to amend or cancel its *PLA* disposition to return the land back to the Crown and public use.¹⁴²

The *Water Act*, passed in 1996,¹⁴³ also provides enhanced environmental measures applicable to coal development. The *Water Act*'s predecessor, the *Water Resources Act*, made scant reference to the role of environmental protection in the regulation of water management and made no reference to the *EPEA*.¹⁴⁴ Unlike the *Water Resources Act*, the *Water Act* includes the following as one of the factors the Director may consider in deciding whether to issue a licence: the "existing, potential or cumulative ... effects on the aquatic environment".¹⁴⁵ The inclusion of this factor, while not mandatory, increases the likelihood that the Director will consider environmental effects in deciding whether or not to issue a licence.¹⁴⁶ Additionally, the *Water Act* explicitly requires the Director to refer an activity, diversion of water, or operation of a works for review under the *EPEA* if the Director is of the opinion that such an activity, diversion of water, or operation of a works requires an *EPEA* approval.¹⁴⁷

¹³⁸ *Conservation and Reclamation Regulation*, Alta Reg 115/1993 [*CR Reg*], s 12(1)(b).

¹³⁹ *EPEA*, s 136; *CR Reg*, s 6(1)(a); *AER Manual 020* at PDF 28.

¹⁴⁰ *AER Manual 020* at PDF 28.

¹⁴¹ *AER Manual 020* at PDF 28.

¹⁴² *AER Manual 020* at PDF 29.

¹⁴³ Bill 41, *Water Act*, 4th Sess, 23rd Leg, Alberta, 1996.

¹⁴⁴ David R Percy, "Seventy-Five Years of Alberta Water Law: Maturity, Demise & Rebirth" (1996) 35(1) *Alta L Rev* 221 at 17 [Percy].

¹⁴⁵ Percy at 17; *Water Act*, s 51(4).

¹⁴⁶ Percy at 18.

¹⁴⁷ *Water Act*, s 5(1)(a).

B. Federal Framework

Coal development in Alberta may require federal approvals or permits from: Transport Canada under the *Canadian Navigable Waters Act* to construct any work in, on, over, under, through or across any navigable water;¹⁴⁸ Fisheries and Oceans Canada under the *Fisheries Act* to cause harmful alteration, disruption or destruction of fish habitat;¹⁴⁹ Environment and Climate Change Canada under the *Migratory Birds Convention Act, 1994* for prohibited activities relating to migratory birds; and, from Natural Resources Canada under the *Explosives Act*.¹⁵⁰ Coal development proponents are also subject to the restrictions imposed by the *SARA* for the protection of listed species, as well as the terms of the action plans and recovery strategies developed pursuant to the *SARA*. The *SARA*, first enacted in 2002, requires a proponent to obtain a permit pursuant to ss. 73 or 74 of the Act to engage in activities that impact the individuals, residences, or identified critical habitat of an extirpated, endangered, or threatened species listed in Schedule 1 of *SARA*.¹⁵¹

The *Wildlife Act*¹⁵² also contains provisions for the creation, management, and protection of wildlife areas for wildlife research, conservation or interpretation. The *Wildlife Area Regulations*¹⁵³ set out general prohibitions, including carrying on an industrial activity and disturbances to land in a designated wildlife area. The *Wildlife Act* was enacted in 1973 and was the first comprehensive Canadian legislation introduced to protect animals.¹⁵⁴

Certain coal development projects are also required to undergo a federal impact assessment. Under the *Impact Assessment Act* (“IAA”) an impact assessment (“IA”) is required for the construction, operation, decommissioning, and abandonment of any new coal mine with a production capacity

¹⁴⁸ RSC 1985, c N-22, s 5.

¹⁴⁹ RSC 1985, c F-14, s 35(2).

¹⁵⁰ RSC, 1985, c E-17, s 7.

¹⁵¹ *SARA*’s general prohibitions include killing, harming, harassing, capturing or taking an individual of a wildlife species listed in Schedule 1; or damaging or destroying the residence of one or more individuals of a wildlife species that is an endangered species or threatened species, or listed as an extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild: *SARA*, ss 32(1), 33. These prohibitions do not apply to non-federal provincial lands unless the species is an aquatic species or protected by the *Migratory Birds Convention Act, 1994*: *SARA*, s 34. *SARA*’s critical habit provisions prohibit the destruction of any part of the critical habitat of any endangered or threatened species or extirpated species, if a recovery strategy has recommended the reintroduction of the species into the wild, where the critical habitat is on federal land, the species is an aquatic species or the species is a species of migratory birds protected by the *Migratory Birds Convention Act, 1994*: *SARA*, s 58.

¹⁵² RSC 1985, c W-9.

¹⁵³ CRC 2020, c 1609.

¹⁵⁴ Bill C-131, *An Act respecting Wildlife in Canada*, 1st Sess, 29th Parl, 1973.

of 5,000 tonnes per day or more.¹⁵⁵ The Regulations enacted under the *IAA* also set out criteria for where an IA will be required for the expansion of an existing coal mine. The Minister of Environment and Climate Change (“Minister of Environment”) has further discretionary authority to require an IA for a project even where it does not meet the criteria set out in the Regulations.¹⁵⁶

The *IAA* was enacted in 2019¹⁵⁷ to materially reform the federal environmental assessment scheme in Canada. The *IAA* is the latest iteration of the federal scheme, which has been drastically reformed and expanded since the initial outlines first proposed as the EARP, which was in effect in 1976. The factors it sets out for the review of a proposed project, and the public engagement and Indigenous consultation required pursuant to the *IAA* are more extensive even than the *Canadian Environmental Assessment Act, 1992*, and the *Canadian Environmental Assessment Act, 2012*,¹⁵⁸ each of which expanded upon the earlier iterations of the federal environmental assessment regime.¹⁵⁹

If an IA is deemed necessary, by default the project is subject to a “standard IA” whereby the Impact Assessment Agency (“IA Agency”) issues a notice of commencement of the IA and sets out the information and studies it requires from the proponent.¹⁶⁰ Upon receipt of that information, the IA Agency conducts an IA and prepares a report to submit to the Minister of Environment.¹⁶¹ A standard IA does not involve a public hearing, but members of the public may submit comments

¹⁵⁵ *Impact Assessment Act*, SC 2009, c 28, ss 2, 6, 9 [*IAA*]; *Physical Activities Regulations*, SOR/2019-285, Schedule, s 18(a).

¹⁵⁶ *IAA*, s 9(1).

¹⁵⁷ Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2019.

¹⁵⁸ SC 2012, c 19, s 52.

¹⁵⁹ For example, and with respect to Indigenous consultation, specifically: The Impact Assessment Agency (“IA Agency”) is required, for the purpose of preparing for a possible IA, to offer to consult with Indigenous groups (*IAA*, s 12). The IA Agency or review panel, in conducting an IA, must also consider the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of Indigenous peoples recognized and affirmed by s 35 of the *Constitution Act, 1982*; Indigenous knowledge provided with respect to the designated project; considerations related to Indigenous cultures raised with respect to the designated project; and, any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body: *IAA*, ss 22(1)(c), (g), (l), (q). Section 63 requires that the Minister of Environment and Cabinet, in making a decision regarding a designated project, consider the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of Indigenous peoples recognized and affirmed by s 35 of the *Constitution Act, 1982*: *IAA*, s 63(d).

¹⁶⁰ *IAA*, s 18(1).

¹⁶¹ *IAA*, s 28(2).

and participate in other engagement activities.¹⁶² After taking into account the IA report, the Minister must determine whether the project is in the public interest, considering the adverse direct or incidental effects of the project indicated in the report, or refer the matter to Cabinet for determination.¹⁶³

The Minister of Environment may refer the IA to a review panel as an alternative to the “standard” IA where the Minister determines it is in the public interest to do so.¹⁶⁴ The review panel must conduct an IA of the project, ensure information it uses is available to the public, hold public hearings, and submit a report regarding the IA to the Minister of Environment.¹⁶⁵ The Minister of Environment must refer the report to Cabinet to determine whether the project is in the public interest considering the adverse direct or incidental effects indicated in the report.¹⁶⁶

Another federal statute, the *Canadian Environmental Protection Act*,¹⁶⁷ has provisions aimed at preventing pollution and reducing toxic substances in the environment, including substances emitted from resource projects. It was first enacted in 1988.¹⁶⁸

C. Indigenous Rights

Section 35 of the *Constitution Act, 1982* recognizes and affirms the rights of Indigenous peoples. As a result of s. 35, where an Indigenous group can establish that it has or is likely to have Aboriginal or treaty rights in an area affected by a particular project, any infringement resulting from the project must be justified. One of the factors in determining whether the infringement is justified is whether the Indigenous group has been adequately consulted.¹⁶⁹ Supreme Court of

¹⁶² Government of Canada, “Phase 3: Impact Assessment,” online: <<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview/phase3.html>>.

¹⁶³ IAA s 60(1).

¹⁶⁴ IAA, s 36(1).

¹⁶⁵ IAA, s 51(1).

¹⁶⁶ IAA, s 61(1). The decision by the Minister or Cabinet as to whether the project is in the public interest must be based on the IA report and a consideration of the following factors: (a) the extent to which the project contributes to sustainability; (b) the extent to which those effects are significant; (c) the implementation of the mitigation measures that the Minister or Cabinet, as the case may be, considers appropriate; (d) the impact the project may have on any Indigenous group and any adverse impact that it may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; and, (e) the extent to which the effects of the project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change: IAA, s 63.

¹⁶⁷ SC 1999, c 33.

¹⁶⁸ Bill C-74, *An Act respecting the Protection of the Environmental and of Human Life and Health*, 2nd Sess, 33rd Parl, 1988.

¹⁶⁹ *Haida Nation*, citing *Sparrow* at para 21.

Canada jurisprudence from 2004 affirmed that the Crown has a duty to consult whenever it has real or constructive knowledge of the potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect that right.¹⁷⁰

While in 1976 there was no recognized duty to consult, this is something now firmly established in Canadian law. It significantly impacts the depth of engagement and assessment that must take place for a proposed coal mine project in the province. Over the last 20 years, Alberta has developed an Indigenous consultation and adequacy assessment process overseen by the Aboriginal Consultation Office (“ACO”), and guided by *The Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management, 2013*;¹⁷¹ *The Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resource Management*;¹⁷² and, *The Government of Alberta’s Guidelines on Consultation with Metis Settlements on Land and Natural Resource Management 2016*.¹⁷³

The interplay between the ACO and the AER in the province is governed by the *Aboriginal Consultation Direction* (“AC Direction”).¹⁷⁴ Pursuant to the AC Direction, the AER and ACO have developed Joint Operating Procedures¹⁷⁵ which establish that, in general, the ACO’s process runs in parallel with the AER’s. The AC Direction also provides that, prior to deciding on an application for which consultation is required, the AER shall request advice from the ACO regarding whether consultation has been adequate and whether actions may be required to address potential adverse impacts on Indigenous rights.¹⁷⁶

Federally, reconciliation played a central role in the enactment of the *IAA* in 2019. In fact, the preamble to the *IAA* provides that “the Government of Canada is committed, in the course of

¹⁷⁰ *Haida Nation* at para 35.

¹⁷¹ Online: <<https://open.alberta.ca/publications/6713979>>.

¹⁷² (July 28, 2014), online: <<https://open.alberta.ca/publications/3775118-2014>>.

¹⁷³ (March 4, 2016) online: <<https://open.alberta.ca/publications/guidelines-on-consultation-with-metis-settlements-2016>>. See also: *The Government of Alberta’s proponent guide to First Nations and Métis Settlements consultation procedures* (2019), online: <<https://open.alberta.ca/publications/goa-proponent-guide-to-first-nations-and-metis-settlements-consultation-procedures-2019>>.

¹⁷⁴ Alberta Department of Energy & Alberta Department of Environmental and Sustainable Resource Development, Energy Ministerial Order 105/2014 / Environment and Sustainable Resource Development Ministerial Order 53/2014 (October 31, 2014) online: <https://www.aer.ca/documents/actregs/MO105_2014.pdf>.

¹⁷⁵ Alberta Energy Regulator, “Joint Operating Procedures for First Nations Consultation on Energy Resource Activities” (October 31, 2018) online: <<https://static.aer.ca/prd/documents/actregs/JointOperatingProcedures.pdf>>; Alberta Energy Regulator, “Joint Operating Procedures for Metis Settlement Consultation on Energy Resource Activities” (October 31, 2018) online: <https://static.aer.ca/prd/documents/actregs/JointOperatingProcedures_MetisSettlements.pdf>.

¹⁷⁶ The AER itself does not have jurisdiction to assess the adequacy of Crown consultation: *REDA*, s 21.

exercising its powers and performing its duties and functions in relation to impact, regional and strategic assessments, to ensuring respect for the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*, and to fostering reconciliation and working in partnership with them.”¹⁷⁷ As noted above, Indigenous consultation is a significant aspect of a federal IA.

D. Alberta’s Land Use Framework

Alberta’s land-use framework (“LUF”), released in December 2008, and implemented through the *Alberta Land Stewardship Act* (“ALSA”),¹⁷⁸ sets out an integrated approach to manage Alberta’s lands and natural resources through regional strategies. The regional strategies are made in light of population growth and competing land use activities that place stress on those resources.¹⁷⁹ The LUF sets out seven strategies to improve land-use decision making in Alberta, the first of which is to “[d]evelop seven regional land-use plans based on seven new land-use regions.”¹⁸⁰

Under s. 3 of the *ALSA*, provincial Cabinet may establish integrated planning regions. Section 4 of the *ALSA* empowers the Cabinet to make or amend regional plans for planning regions. Establishing and enforcing regional plans under the *ALSA* provides a means to: integrate decision-making regarding specific land-use regions; determine how government policies and strategies will align at a regional level; and respond to the cumulative effects of development, including coal mining.¹⁸¹ Unlike the 1976 Coal Policy, regional plans are legislative instruments and, for the purposes of any other enactment, are considered to be regulations.¹⁸²

The AER is required, in carrying out its duties and functions under *REDA*, to act in accordance with any *ALSA* regional plan.¹⁸³ Further, the AER may, in issuing an approval, order or direction authorized under *REDA*, direct any person subject to the approval to comply with a provision of an *ALSA* regional plan.¹⁸⁴

¹⁷⁷ *IAA*, Preamble.

¹⁷⁸ SA 2009, c A-26.8 [*ALSA*].

¹⁷⁹ Government of Alberta, “Land Use Framework” (December 1, 2008) at PDF 6, online: <<https://open.alberta.ca/dataset/30091176-f980-4f36-8f5a-87bc47890aa8/resource/bc4b3fac-5e59-473b-9a99-1a83970c28e7/download/4321768-2008-land-use-framework-2008-12.pdf>>.

¹⁸⁰ *Ibid* at PDF 23.

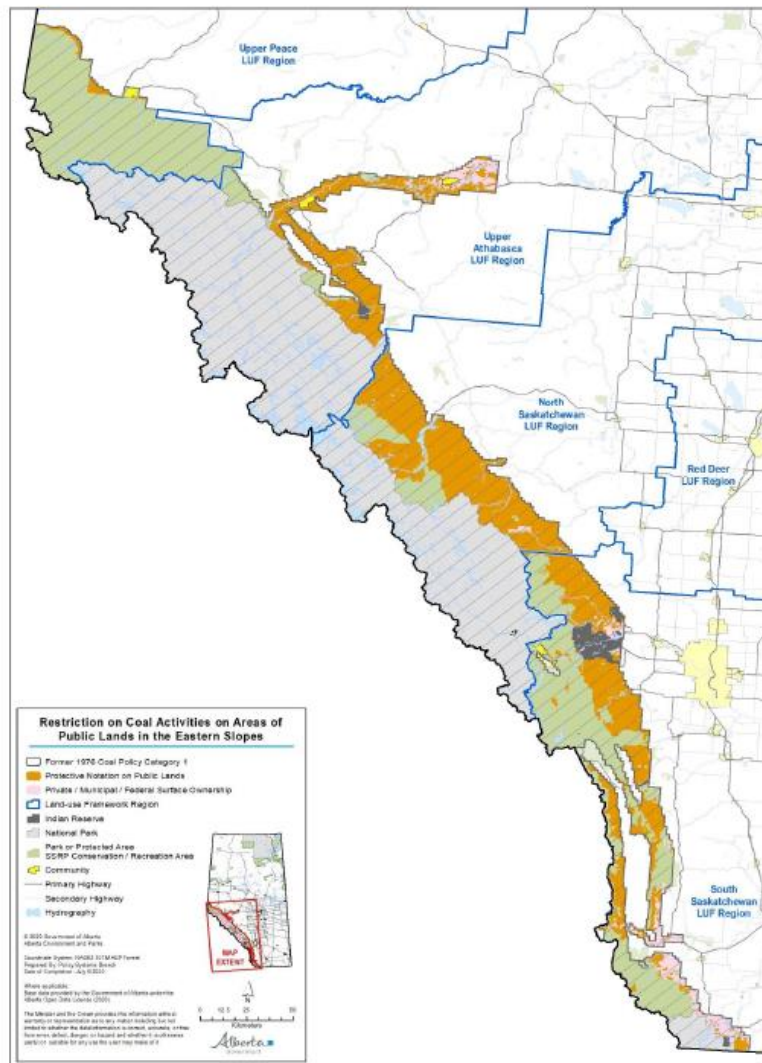
¹⁸¹ Nigel Bankes, Sharon Mascher & Martin Olsynski, “Can Environmental Laws Fulfil Their Promise? Stories from Canada” (2014) 6:9 Sustainability 6024 at paras 5, 11-12.

¹⁸² *ALSA*, s 13.

¹⁸³ *REDA*, s 20(1).

¹⁸⁴ *REDA*, s 20(2).

The following map shows the coal category lands under the 1976 Coal Policy overlapping the regions for which *ALSA* regional plans have been or are being developed:¹⁸⁵



The SSRP – which covers the region in which the Cabin Ridge Property is proposed – was approved in July 2014 and amended in May 2018 to incorporate newly established parks and sub-regional plans. The SSRP was developed after an extensive three-phase consultation process that considered input from the South Saskatchewan Regional Advisory Council, Indigenous peoples,

¹⁸⁵ Government of Alberta, “Restriction on coal activities on areas of public land in the Eastern Slopes” (September 11, 2020), online: <<https://open.alberta.ca/publications/restriction-on-coal-activities-on-areas-of-public-land-in-eastern-slopes>>.

stakeholders, municipalities, and the public on: the region's issues; feedback and advice from the South Saskatchewan Regional Advisory Council; and feedback on the draft SSRP.¹⁸⁶

The stated purpose of the SSRP is to “[set] the stage for robust growth, vibrant communities and a healthy environment within the region over the next 50 years.”¹⁸⁷ In particular, “[t]he SSRP:

- Establishes a long-term vision for the region;
- Aligns provincial policies at the regional level to balance Alberta's economic, environmental and social goals;
- Reflects ongoing commitment to engage Albertans, including aboriginal peoples, in land-use planning;
- Uses a cumulative effects management approach to balance economic development opportunities and social and environmental considerations;
- Sets desired economic, environmental and social outcomes and objectives for the region;
- Describes the strategies, actions, approaches and tools required to achieve the desired outcomes and objectives;
- Establishes monitoring, evaluation and reporting commitments to assess progress; and,
- Provides guidance to provincial and local decision-makers regarding land use management for the region.”¹⁸⁸

The SSRP includes only one specific reference to the 1976 Coal Policy, within its Implementation Plan section, in which it confirms the SSRP is intended to supersede the coal categories established in the 1976 Coal Policy:

The Integrated Resource Plans will remain in effect until they have been reviewed for their relevance and incorporated as appropriate under the implementation strategies of this regional plan or future subregional or issue-specific plans within the region. This will include direction for key industrial sectors such as coal, oil and gas, industrial minerals and aggregates. As part of reviewing and incorporating the Integrated Resource Plans, the government will integrate a review of the coal categories, established by the 1976 A Coal Development Policy for Alberta to

¹⁸⁶ SSRP at PDF 7.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid* at PDF 8.

confirm whether these land classifications specific to coal exploration and development should remain in place or be adjusted. The review of the coal categories will only be for the South Saskatchewan planning region. The intent is for the SSRP and implementation strategies of the regional plan or future associated subregional or issue-specific plans within the region to supersede the coal categories for the purposes of land use decisions about where coal exploration and development can and cannot occur in the planning region.¹⁸⁹

The SSRP also provides its vision for the significant potential for metallurgical coal development and the region, and the benefits such development can bring:

The metallurgical coal potential in the region is of significance in that the coal can be used in the steel-making process. For many developing or expanding countries, steel will be an essential component for infrastructure and Alberta's metallurgical coal could help meet those demands. Exploration and investment for coal near the Municipality of the Crowsnest Pass in the eastern portion of the region has increased over the past five years and demonstrates the future potential for coal development in the region. Ensuring opportunities for coal exploration and development in the region will create economic diversification opportunities and export markets for Alberta coal and mineral resources and will result in increased employment in the region.¹⁹⁰

Despite recognizing the benefits of metallurgical coal development, the SSRP still prevents such development in areas identified as conservation areas:

Conservation areas will be managed to minimize or prevent new land disturbance. This means the land disturbance associated with oil and gas, mining, cultivated agriculture and commercial forestry operations are not considered compatible with the management intent of conservation areas. However, those with freehold mineral rights will not be subject to this restriction.¹⁹¹

The following Regulatory Detail provisions of the SSRP set out further restrictions on where coal development can take place (notably absent is any further reference to the land categories of the 1976 Coal Policy):

Section 18(1) of the SSRP prohibits a decision maker from granting or approving an approval under the CCA or disposition under the PLA in respect of the following wildlife provincial parks: Don Getty Wildland Provincial Park, Valley Wildland Provincial Park, Bluerock Wildland Provincial

¹⁸⁹ *Ibid* at PDF 67.

¹⁹⁰ *Ibid* at PDF 20.

¹⁹¹ *Ibid* at PDF 70.

Park, High Rock Wildland Provincial Park, Bob Creek Wildland Provincial Park, and Livingstone Range Wildland Provincial Park.¹⁹²

Section 24(1) of the SSRP prohibits a decision maker from granting or renewing an approval under the CCA or disposition under the PLA in respect of Pekisko Heritage Rangeland.¹⁹³

Section 43(1) of the SSRP prohibits a decision maker from granting or renewing an approval under the CCA or disposition under the PLA with respect to the following provincial parks: Elbow Valley Provincial Park, Sheep River Provincial Park, Chinook Provincial Park, and Cypress Hills Provincial Park.¹⁹⁴

Section 48(1) of the SSRP prohibits a decision maker from granting or renewing an approval under the CCA or disposition under the PLA with respect to the following provincial recreation areas: Sibbald Lake Provincial Recreation Area, Crowsnest Lake Provincial Recreation Area, and Coleman Provincial Recreation Area.

The SSRP also provides a management framework for air and water quality that sets out standards, limits or thresholds and triggers. Applications for development that would surpass these thresholds trigger a management decision that could include anything from mandatory restrictive management to commitments to research and monitoring.¹⁹⁵

The development of freehold minerals is not subject to the restrictions set out in ss. 18, 24, 43 and 48 of the SSRP.¹⁹⁶ However, the SSRP sets out the following strategy for stewardship and conservation on private land:

Encourage and support the continued stewardship of Alberta's private lands through the development and piloting of regionally appropriate conservation tools. These tools may include exploring market-based options, voluntary conservation easements and the provision of other government and/or private sector incentives that assist in achieving environmental outcomes.¹⁹⁷

Prior to the enactment of the *ALSA* and the completion of the SSRP, integrated resource plans ("IRPs" or singularly, "IRP") were introduced. These represented the Alberta government's policy for public lands and resources within defined areas; identified resource potentials and opportunities

¹⁹² *Ibid* at PDF 169.

¹⁹³ *Ibid* at PDF 177.

¹⁹⁴ *Ibid* at PDF 183.

¹⁹⁵ *Ibid* at PDF 163, 173 (s 12), 174 (s 14), 181 (s 37), 182 (s 39).

¹⁹⁶ *Ibid* at PDF 70, 176 (s 18(3)), 178 (s 24(3)), 184 (s 43(3)), 185 (s 48(3)).

¹⁹⁷ *Ibid* at PDF 81.

for development; and, provided guidance for decision makers, industry, and the public having responsibility or interests in the area.¹⁹⁸ One such IRP is the Livingstone Porcupine Hills Sub-Regional IRP, which was introduced in 1987.¹⁹⁹

The Livingstone-PH IRP states that all proposals for coal exploration and development must be processed in accordance with the 1976 Coal Policy.²⁰⁰ The Livingstone-PH IRP recognizes the restrictions that apply under the 1976 Coal Policy on Category 2 lands within the Oldman River and Livingstone zones.²⁰¹ However, it also includes resource management objectives for the area that include continued exploration and consideration of coal developments.²⁰² Moreover, like the 1976 Coal Policy, the Livingstone PH IRP has no legal status.²⁰³

The SSRP states that the Livingstone-PH IRP will remain in effect until it has been reviewed for its relevance and incorporated “as appropriate” under the implementation strategies of the SSRP or subregional plans.²⁰⁴ The phrase “as appropriate” indicates that IRPs such as the Livingstone-PH IRP will only be legally incorporated into the new planning hierarchy at the discretion of the decision maker,²⁰⁵ which, to date, has not taken place. The SSRP does not contain any clear and express approval, adoption, or incorporation of the Livingstone-PH IRP as part of the SSRP, pursuant to s. 10(1) of the *ALSA*.

In 2018, the Alberta government published the Livingstone-Porcupine Hills Land Foot Management Plan (“Footprint Plan”), which became effective as a subregional plan under the SSRP and in accordance with s. 13(5) of the *ALSA*.²⁰⁶ The Footprint Plan makes no reference of the 1976 Coal Policy. However, it does refer to the Livingstone-PH IRP. The Footprint Plan borrows language from the SSRP, stating “[t]he 1987 Integrated Resource Plan will remain in effect until all provisions have been reviewed for their relevance and incorporated as appropriate

¹⁹⁸ Government of Alberta, “Integrated Resource Plans”, online: <<https://www.alberta.ca/integrated-resource-plans.aspx>>.

¹⁹⁹ Government of Alberta – Economic Planning Committee of Cabinet, “Livingstone-Porcupine Hills Sub-Regional Integrated Resource Plan (August 4, 1987) [Livingstone-PH IRP].

²⁰⁰ *Ibid* at PDF 33.

²⁰¹ *Ibid* at PDF 61.

²⁰² *Ibid* at PDF 58.

²⁰³ *Ibid* at PDF 3.

²⁰⁴ SSRP at PDF 10-11, 67.

²⁰⁵ *Ibid* at PDF 10-11, 67.

²⁰⁶ Livingstone-PH IRP at PDF 3.

under the implementation strategies of subregional planning or issue-specific plans in the region.”²⁰⁷

Elsewhere, the Footprint Plan suggests that relevant provisions in sub-regional IRPs such as the Livingstone-PH IRP are “effectively rescinded”, referring to Appendix B of the Footprint Plan.²⁰⁸ The Footprint Plan further states:

As part of reviewing and incorporating the Integrated Resource Plans, the Government of Alberta will integrate a review of the coal categories for the South Saskatchewan Region ... New direction, consistent with footprint planning outcomes, will supersede the coal categories and may extend to all large-scale industrial disturbances, including coal. This new direction should be consistent with an integrated approach. It will specify where surface exploration and development can and cannot occur based on the best and most recent biodiversity sensitivity data²⁰⁹

Appendix B of the Footprint Plan includes some analysis of the Livingstone-PH IRP, indicating that it was already reviewed for relevance:

The [Livingstone-PH IRP] included 484 provisions with 83 percent considered aligned with current plans, directives and other land management tools. The remaining 17 percent were redirected for consideration on a localized scale during development of various plans such as the Footprint Plan ... under the [SSRP]²¹⁰

Forty provisions were identified to be addressed by the implementation of the [Footprint Plan] or to be redirected to sectorial plans ...²¹¹

While the SSRP and the Footprint Plan are legally enforceable documents, the 1976 Coal Policy and the Livingstone-PH IRP were never given legal effect nor are they currently applicable as policy documents. The SSRP and Footprint Plan both acknowledge that the Livingstone–Porcupine Hills area is intended to be managed for various values and land uses, including mineral resource development. As discussed above, such a manner of planning for multiple land uses and

²⁰⁷ *Ibid* at Appendix B, PDF 47.

²⁰⁸ *Ibid* at PDF 27.

²⁰⁹ *Ibid* at PDF 27.

²¹⁰ *Ibid* at Appendix B, PDF 47.

²¹¹ *Ibid* at Appendix B, PDF 47.

not categorically rejecting legitimate proposals also aligns with the 1984 Eastern Slopes Policy, to which the 1976 Coal Policy was required to conform.²¹²

In addition to the conservation areas set out in the SSRP, the Footprint Plan includes three of its own land-use categories, independent of the 1976 Coal Policy. “Zone 1 – Conservation” includes existing and proposed protected areas or conservation areas determined in the SSRP and more recent Castle Parks designations.²¹³ “Zone 2 – Enhanced” includes high value landscapes in which economic and social opportunities are enabled with lower intensity disturbances and activity types.²¹⁴ “Zone 3 – Extensive” includes land within which a broad range of economic and social opportunities are enabled, but with an emphasis on reclamation and managing new footprint disturbance.²¹⁵ The Footprint Plan shows the geographical location of each of the zones in the following map:²¹⁶

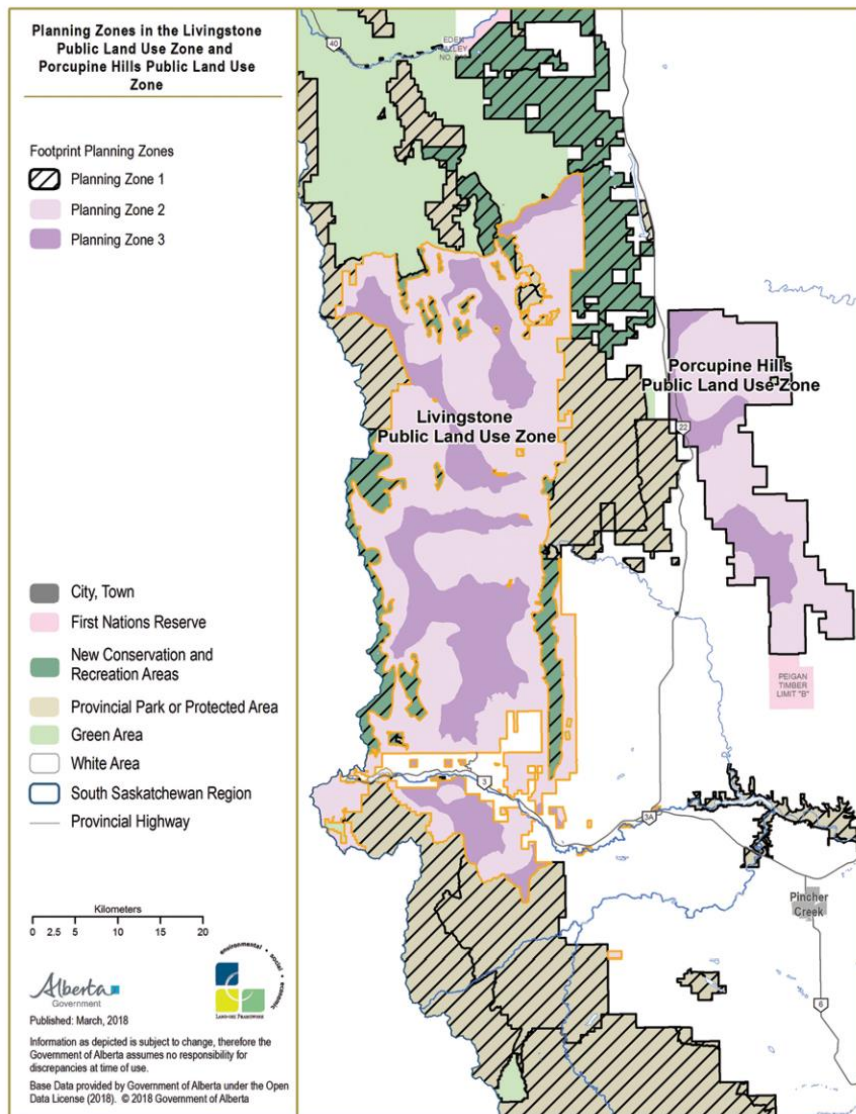
²¹² Eastern Slopes Policy at Preface.

²¹³ Livingstone-PH IRP, PDF 11.

²¹⁴ *Ibid* at PDF 11.

²¹⁵ *Ibid* at PDF 12.

²¹⁶ *Ibid* at PDF 41.



As noted above, the Alberta government has further committed in the Footprint Plan to creating a new direction specifying “where surface exploration and development can and cannot occur based on the best and most recent biodiversity sensitivity data” – not the data relied on to develop the 1976 Coal Policy land categories.²¹⁷

²¹⁷ *Ibid* at PDF 27.

VI. CABIN RIDGE'S POSITION

A. Process

Cabin Ridge welcomes the opportunity to participate in the Alberta government's Coal Policy Engagement. Its objective is to be a world class leader in sustainable resource development and has fully invested in pursuing that role in its exploration and development of metallurgical coal in the province. It has shown its long-term commitment to investment in Alberta's resources by purchasing outright the vast majority of its coal interests in freehold, and rapidly moving into extensive exploration and feasibility assessments.

Cabin Ridge recognizes the Coal Policy Engagement as an opportunity for Alberta to further develop its already robust and comprehensive regulatory framework for coal exploration and development. Through a transparent and meaningful consultation process, Cabin Ridge believes that Alberta can develop a modern coal policy that reflects the current social, economic, and ecological values of Indigenous groups, the broader Alberta public, and industry stakeholders.

With a commitment to listening and responding to the legitimate concerns of our neighbours, Cabin Ridge specifically encourages the Coal Policy Engagement process to consider the following areas:

- Indigenous consultation, given the importance of reconciliation that is possible through natural resource decisions, and the potential benefits of coal development for local Indigenous groups – Cabin Ridge would address Indigenous reconciliation through Impact Benefit Agreements, and if appropriate through partnership participation;
- Water use and quality, given that neighbours to Cabin Ridge's Project areas have expressed concerns regarding the preservation of water quality and supply – Cabin Ridge would address water use and quality by following provincial guidelines and applying multiple layers of control in managing Selenium;
- Land use considerations, such as concerns regarding "mountain top mining" given there has been no proposal to remove protections in place for mountain tops in the Rocky Mountains, which would fall within Category 1 lands in the 1976 Coal Policy – Cabin Ridge does not advocate for changes to Category 1 lands;
- Land use considerations, such as reclamation obligations, which was raised as a significant concern in the early 1970s. While standards and practices have improved substantially since 1976, it is an area in which coal companies should be encouraged to continue to invest in and strive to return mined lands to the Crown without delay – Cabin Ridge recognizes that Albertans have a deep commitment to land reclamation;

- Biodiversity and species at risk considerations, particularly in light of the opportunities during reclamation and mine closure to re-introduce and foster biodiversity – Cabin Ridge welcomes the opportunity to be stewards of biodiversity and species at risk;
- The value of fostering metallurgical coal development in Alberta, given the fact that while thermal coal can be replaced by renewable energy, metallurgical coal is essential for commercial steel production, and steel is necessary for a wide range of vital products and developments around the world;
- Canada's and Alberta's climate change objectives – Cabin Ridge will pursue climate change objectives consistent with government policies; and,
- The desire of Albertans to set aside from development greater portions of Alberta and the Eastern Slopes – Cabin Ridge supports the further delineation of lands that are not suitable for coal development.

Cabin Ridge believes that, while the Alberta public interest is the central foundation of the Coal Policy Engagement, the process should have a local, regional, and global perspective, as the outcomes of the process will have truly wide-ranging impacts. Additionally, it should be an objective of the process to provide clear understanding and certainty for all parties, including Indigenous communities, the Alberta public, and industry investors.

B. Economic Outcome – Global and Local

Metallurgical coal used to produce steel remains an essential commodity in Alberta and around the world. Sterilizing Alberta's metallurgical steel resources would result in negative outcomes that reach far beyond Alberta's borders.

Globally, the modern world is one of steel. Steel-making coal, iron ore, and steel production are fundamental to lifting hundreds of millions of people around the world out of poverty. Steel demand is driven by urbanization and industrialization, with those processes in turn improving living standards. Those improved living standards drive superior environmental outcomes as the environment becomes a higher priority once basic human needs are met (not to mention that steel is a necessary component of green energy projects including wind turbines and hydroelectric dams).

If Alberta's metallurgical coal is not added to the global supply, that deficiency will be made up by production from China or Russia. The global environmental impact from those jurisdictions, whether through contamination, human impact or greenhouse gas (GHG) emissions will be greater than that from a world class regulatory jurisdiction such as Alberta. Respecting GHG, over the past decade Canada has introduced several policy and legislative measures to address GHG including the *Greenhouse Gas Pollution Pricing Act* and the *Canadian Net-Zero Emissions Accountability Act* with its call for interim targets and reporting. Conversely, Russian climate change policy centres around the introduction of new technologies as a primary plan and goal

rather than the introduction of specific GHG reduction targets. Additionally, and as compared to Western Canada's 1100 km, steel making coal production in Russia is up to and over 4000 km from tidewater, and the greenhouse gas emission from that factor alone as compared to Canada is of note. China had outlined GHG reduction strategies that are currently reside in the planning or conceptual phase, and with incentives to reduce GHG centered around stimulus packages. China has a complex planned economy with diverse measures and objectives including banning the construction of coal power plants within China, financing coal power plants outside China, encouraging renewables, supporting the thermal coal production sector and supporting electric mobility. It is not possible to predict how these different objectives on GHG will merge. Therefore, respecting GHG, it can easily be inferred that the potential high quality steel making coal production from Canada is a superior global outcome to production from alternative jurisdictions. Finally, Canada has shown no plans to reduce its use of steel, indicating that domestic supply needs will remain high into the future.

Locally, as a consequence of the development of steel-making coal mines, the economic benefits derived by communities is considerable. As outlined in detail during the Grassy Mountain hearing held in October and November of 2020,²¹⁸ the socio-economic benefits expected from the development of a property such as the Cabin Ridge Project would include the following (note that the numbers presented below are based on the Grassy Mountain Project, as presented to a joint review panel formed by the AER and the IA Agency):

- During the construction phase, the creation of up to 700 full time positions over an approximate two-year period.
- During the production phase, the creation of 300 to 500 full time positions over the course of mine operating life, estimated at 25 years.
- During the post-production phase, the continuation of 10 to 20 full time positions over the course of the reclamation, closure, and water monitoring activities.
- Considerable indirect employment and the purchase of goods and services from local and provincial sources including fuel, transportation services, electricity, equipment, fabrication, and various contract services.
- An estimated \$1 billion of investment in mine infrastructure.
- Payment of federal, provincial, and municipal taxes during mine operations.

²¹⁸ Transcripts of the hearing and the EIA report for Grassy Mountain is available at: Canadian Impact Assessment Registry, "Grassy Mountain Coal Project" (Reference No. 80101), online: <<https://iaac-aeic.gc.ca/050/evaluations/proj/80101>>.

Cabin Ridge advocates for a modern coal policy that allows Alberta to cement a world-leading role in the global steel supply chain while providing numerous local, regional and national benefits.

C. Outcome – Regional and Provincial

Cabin Ridge supports the Alberta government's stated objective for the Coal Policy Engagement: to balance stringent environmental protections with responsible resource development.²¹⁹ To that end, Cabin Ridge advocates against a blanket ban on metallurgical coal exploration and development on lands categorized under the 1976 Coal Policy.

The 1976 Coal Policy relies on broad, arbitrarily defined land categories that are based on outdated data and analysis. They do not allow for a case-by-case assessment to determine whether specific parcels of lands that happen to fall within Category 2 lands, for example, are suitable for resource development. The purpose and intent of the land categories have been superseded by the current environmental assessment and regulatory regime, and regional land use planning is now addressed on an updated, evidence-based system under Alberta's LUF and the *ALSA*. The SSRP and the Footprint Plan specifically govern integrated land use planning for the area in which the Cabin Ridge Project is planned, and they do not prohibit coal development.

Since the 1976 Coal Policy was developed, private enterprise and regulatory activity has been undertaken to delineate and detail the steel-making coal resources of Alberta. Consequently, much greater certainty can be counted on to determine areas suitable for coal development now than was the case 45 years ago. Additionally, key elements of resource development that were not contemplated during the development of the 1976 Coal Policy, including climate change and Indigenous concerns, can be introduced into the discussion respecting the development of a modern coal policy for Alberta.

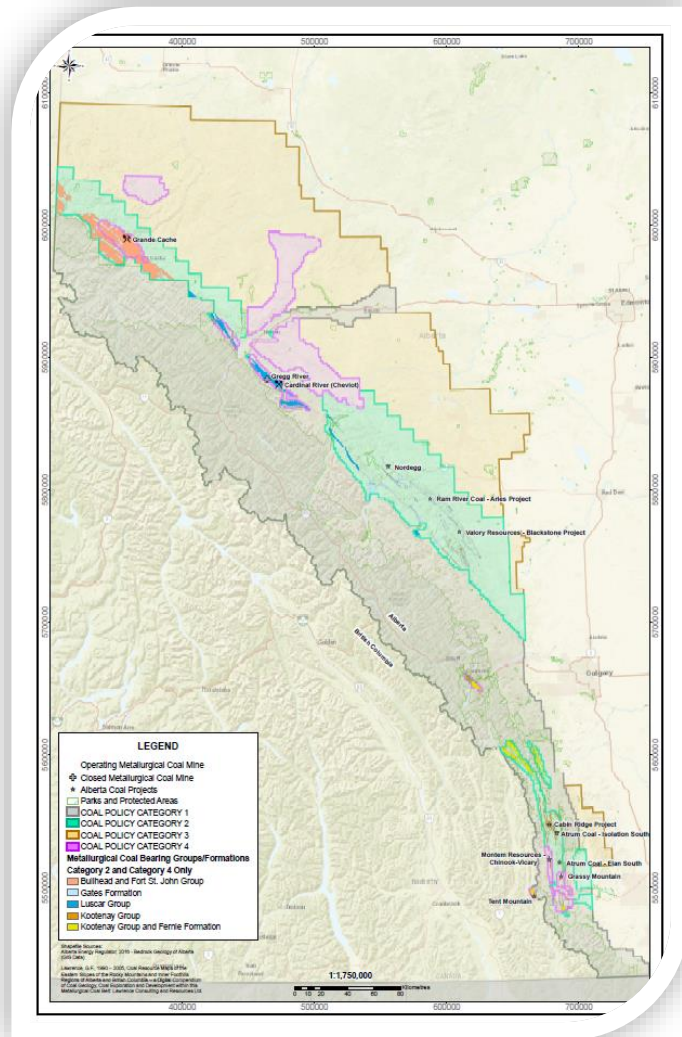
An examination of the land encompassed by the land categories in the 1976 Coal Policy shows that only a small fraction of the area covered by the Policy is suitable for steel-making coal development. In fact, as shown in the table below,²²⁰ the percentage of area covered by the 1976 Coal Policy (i.e., Categories 1 through 4 in the Eastern Slopes) that is suitable for steel-making coal development is approximately 3%:

²¹⁹ Engagement Announcement.

²²⁰ Prepared by Cabin Ridge in 2021 based on the most recent data available regarding the portion of Alberta's coal resources that are suitable for steel-making coal development.

CURRENT 1976 Coal Policy Land Category System		Category				TOTAL
Item		1	2	3	4	
Total Area Eastern Slopes	(sq km)	41,555	14,584	33,270	5,332	94,741
Percent of Total	(%)	44%	15%	35%	6%	100%
Area of Category Restricted (Parks, Water bodies)	(sq km)	41,555	530	732	235	43,052
Percent of Category Restricted	(%)	100%	4%	2%	4%	45%
Surface Area of Met Coal Bearing Groups	(sq km)	2,234	1,248	0	684	4,166
Surface Area of Met Coal Bearing Groups Currently Protected	(sq km)	2,234	108	0	72	2,414
Percent Coal Bearing Group Currently Protected	(%)	100%	9%	0%	11%	58%
Established Resources Met Coal	(Mt)	1,806	2,206	0	3,152	7,164
Established Exploration Targets Met Coal	(Mt)	0	2,193	0	510	2,703
Surface Area Potential for Met Coal Mining	(sq km)	0	1,140	0	612	1,752
Surface Area Potential for Met Coal Mining (Disturbance)	(sq km)	0	1,994	0	1,071	3,065
Percent Surface Area Potential for Met Coal Mining	(%)	0%	14%	0%	20%	3%

The below map provides a further visual of the coal categories overlapping metallurgical coal formations in the Eastern Slopes:



Cabin Ridge recognizes and understands the Alberta public's primary concerns with respect to the prospect of resource development in the Rocky Mountains, particularly in protected areas. Cabin Ridge notes that those areas currently fall within Category 1 lands under the 1976 Coal Policy, and that there are no proposals for coal development on Category 1 lands. Those lands are currently protected from development, and Cabin Ridge does not propose any change from that status quo. Additionally, Cabin Ridge notes that the most up-to-date data shows that the land encompassed by Category 3 is not suitable for the development of steel-making coal resources. Due to public policy respecting climate change, there is little probability that those lands will ever be developed for thermal coal resources. Shifting those Category 3 lands into protected status will further the public's goals respecting land stewardship and conservation.

Finally, a significant portion of the lands classified within Categories 2 and 4 are outside of the geological setting that includes steel-making coal (see map set out immediately above). Those areas could also be transferred to protected or restricted-activity status without ruling out the development of steel-making resources found elsewhere within the Category 2 and 4 lands. The table below provides a quantitative measure of the lands currently set out in the different land categories under the 1976 Coal Policy in the Eastern Slopes, and Cabin Ridge's proposed reallocation of the coal categories on the land base (assuming the coal category system or some other revised land classification system were retained). This table notably shows a drastic increase in the proposed total percentage of the Eastern Slopes that would be preserved from coal mine development, while providing an opportunity for the development of valuable steel-making coal found in Categories 2 and 4.

PROPOSED 2022 Coal Policy Land Category System		Category				TOTAL
Item		1	2	3	4	
Total Area Eastern Slopes	(sq km)	41,555	14,584	33,270	5,332	94,741
Percent of Total	(%)	44%	15%	35%	6%	100%
Proposed Increased Total Area of Category Restricted & Protected	(sq km)	41,555	12,590	33,270	4,261	91,676
Proposed Percent of Category Restricted	(%)	100%	86%	100%	80%	97%
Surface Area Open for Potential Development & Assessment	(sq km)	0	1,994	0	1,071	3,065
Percent of Category	(%)	0%	14%	0%	20%	3%

D. Outcome – Modern Coal Policy

Cabin Ridge advocates for responsible resource development that is subject to the robust environmental and regulatory regime that Alberta and Canada have developed over the last 50 years. The provincial and federal regimes provide mechanisms for a thorough case-by-case assessment of the suitability of the lands in question for coal development, overarching regional land-use planning under the *ALSA*, and strict reclamation standards. The goal under these regimes remains to balance economic growth with environmental protection, rather than to outright prohibit the development of resources to the detriment of Alberta's social and economic interests.

It should be acknowledged that the 1976 Coal Policy's four coal categories were developed 45 years ago at a time when:

- Environmental assessments were a brand new concept and still under development at both the provincial and federal levels;
- Reclamation standards were in their infancy;
- Significant doubts remained as to whether reclamation of surface coal mines would be possible;

- Concepts of Indigenous rights and consultation remained foreign (and noticeably absent from discussion in the 1976 Coal Policy);
- There was no legislative protection for species at risk;
- There was no LUF, no *ALSA*, and no *ALSA* regional plans such as the SSRP;
- It was more justifiable to sterilize large areas of land, given that the Alberta population in 1976 was only 1.87 million compared to 4.44 million at the beginning of 2021; and,
- The language of the 1976 Coal Policy itself expressed the intent for the Policy and its land categories to be temporary, referring to: the uncertainty of reclamation on Category 1 lands due to the technology that existed in 1976;²²¹ the indeterminacy of preferred land uses for Category 2 lands in 1976;²²² potential land use conflicts on Category 3 lands being unresolved in 1976;²²³ the intention for there to be no renewals of leases on Category 1 lands but allowing for continued lease renewals on Category 2 and 3 lands;²²⁴ and, all categories being based on the best available knowledge in 1976 with a view to those categories being reviewed in light of changing knowledge and new technology.²²⁵

Current evaluations of projects, including coal projects, under the *EPEA* and the *IAA* allow for a significantly greater degree of scrutiny of projects than that which existed in 1976. The *EPEA* and *IAA*, along with the SSRP and other regional plans currently in force or under development, allow for controlled and orderly development for any mineral, including coal, in Alberta, and within the region Cabin Ridge has coal development interests.

Local benefits of metallurgical steel projects include the facilitation of Indigenous reconciliation by supporting commitments made to Indigenous peoples by the Crown and allowing for further self determination of Indigenous communities, whether through employment or investment. Other benefits include supporting local economies through the creation of direct and indirect employment, investment, and community infrastructure programs; and, significant tax and royalty revenue, which in turn support social services. These benefits will be particularly vital as the Alberta economy seeks to recover from the economic impacts of the Covid-19 pandemic.

²²¹ 1976 Coal Policy at 15.

²²² *Ibid* at 18.

²²³ *Ibid* at 18.

²²⁴ *Ibid* at 19.

²²⁵ *Ibid* at 17.

In conclusion, to fulfill the objective of balancing stringent environmental management with responsible resource development, a modern coal policy should encompass the following:

- The shifting of land within the various categories to acknowledge the footprint of actual resource development and improved land stewardship and protection from coal development;
- Acknowledging and addressing Indigenous reconciliation that can be achieved, in part, through resource development; and,
- An outline of the various detailed and thorough regulatory processes that govern resource development in Alberta.

In closing, Cabin Ridge is pleased to participate in the Coal Policy Engagement. It submits that through this process, the Alberta government should endorse a truly modern coal policy that reflects the present social, economic, and ecological values of Indigenous groups, the Alberta public, and industry stakeholders. This modern policy is already founded in the robust and comprehensive regulatory framework that exists for responsible and sustainable resource development in the province. Metallurgical coal development can be a key element to helping Alberta balance economic growth and environmental protection well into the future.